(5)

No. 89-1217

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

JAMES P. LEHNERT, *et al.*,
Petitioners,

v.

THE FERRIS FACULTY
ASSOCIATION-MEA-NEA, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

JOINT APPENDIX, VOLUME I

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(continued over)

PETITION FOR CERTIORARI FILED JANUARY 30, 1990
CERTIORARI GRANTED JUNE 11, 1990

TABLE OF CONTENTS

VOLUME I

Page

Relevant Docket Entries (W.D. Mich.) 1

Relevant Docket Entries (6th Cir.) 4

Amended Complaint (filed Apr. 25, 1979) 6

Defendant Unions' Answer to Amended Complaint (filed Feb. 23, 1983) 14

Trial Transcript, Vol. I, Testimony of Peter McNenly (Jan. 7-8, 1986) 18

Trial Transcript, Vol. II, Testimony of Peter McNenly (Jan. 9, 1986) 28

Trial Transcript, Testimony of Warren D. Culver (Jan. 9, 1986) 33

Trial Transcript, Testimony of Mitchell E. Roth (Jan. 10, 1986) 37

Trial Transcript, Vol. II, Testimony of Wayne S. Diviney (Jan. 10, 1986) 39

Trial Transcript, Testimony of Warren D. Culver (Jan. 13-14, 1986) 45

Trial Transcript, Vol. II, Testimony of Steven H. Hanke (Jan. 14, 1986) 63

Trial Transcript, Vol. III, Testimony of Jamille Webster (Jan. 15, 1986) 84

TABLE OF CONTENTS, CONTINUED

Page

Trial Transcript, Testimony of Robert K. Marshall (Jan. 16, 1986) 85

Trial Transcript, Vol. III, Testimony of Barry Hawthorne (Jan. 17, 1986) 98

Trial Transcript, Testimony of Catherine Anderson [and Stipulations and Admission of Exhibit] (Jan. 17, 1986) 107

Trial Transcript, Vol. IV, Testimony of Elizabeth M. Baker (Apr. 23-24, 1986) 110

Judgment (6th Cir. Aug. 14, 1989) 129

VOLUME II

Plaintiffs' Trial Exhibit 21, Minutes, FFA Executive Board Meeting (Feb. 3, 1982) 131

Plaintiffs' Trial Exhibit 29, MEA Job Action Investigation Report re Ferris Faculty Association (Aug. 12, 1981) 132

Plaintiffs' Trial Exhibit 33, Letter from Bruce L. Beetley, President, Ferris Faculty Association, & Michael D. McKeown, 13-E UniServ Director, to Keith Geiger, President, MEA (Oct. 8, 1981) 136

Plaintiffs' Trial Exhibit 55, Letter from Mark Jenkins, 13-E UniServ Director, to Art Rice, MEA (Feb. 15, 1982) 138

TABLE OF CONTENTS, CONTINUED

Page

Plaintiffs' Trial Exhibit 56, Letter from Mark Jenkins, 13-E UniServ Director, to Dick Ringstrom, MEA (Mar. 29, 1982) 140

Plaintiffs' Trial Exhibit 73, Report Card on MEA's 1982-84 Goals & Objectives from Fall 1982 Representative Assembly Handbook 141

Plaintiffs' Trial Exhibit 158, Appendix D (1982 MEA-MESPA-NEA Priorities) to the Minutes of the Pre-NEA Representative Assembly Coordinating Committee (Mar. 27, 1982) 154

Plaintiffs' Trial Exhibit 164, PPE Activities Schedule & Timelines 157

Plaintiffs' Trial Exhibit 168, Memorandum from MEA Membership Services Department to MEA Board of Directors, Local Association Presidents & UniServ Directors (Feb. 19, 1982) 184

Plaintiffs' Trial Exhibit 197, Memorandum from MEA Government Affairs Department, Charles Alexander, Ken MacGregor & Pat Dolan, to PAC Chairpersons & UniServ Directors (Dec. 8, 1981) 186

Plaintiffs' Trial Exhibit 529, Memorandum from Kai Erickson to Morris Andrews, WEA Executive Secretary, & Attached Summary of Education Association Services to Members, "Background of Services" (Jan. 4, 1975) 191

TABLE OF CONTENTS, CONTINUED

Page

Excerpts from Plaintiffs' Trial Exhibit 594, Content Analysis of the MEA's *Teacher's Voice*, Volume 59 197

Plaintiffs' Trial Exhibit 604, Resume of Steve H. Hanke, Ph.D. 251

Excerpts from Plaintiffs' Trial Exhibit 612, *Teacher's Voice*, Vol. 59, Nos. 1-20 256

Excerpt from Plaintiffs' Trial Exhibit 627, Organizing & Bargaining Department Weekly Reports, Memorandum from Art Rice to Bob Marshall Attached to Weekly Report Dated Oct. 23, 1981 290

Excerpts from Defendant Unions' Trial Exhibit I, 1981-84 Agreement Between the Board of Control of Ferris State College & the Ferris Faculty Association, MEA-NEA 291

Excerpts from Defendant Unions' Trial Exhibit GGGG, NEA Program Accomplishment Report, Fiscal Year 1981-82 293

ITEMS REPRODUCED IN APENDICES TO THE PETITION FOR A WRIT OF CERTIORARI

Pursuant to Supreme Court Rule 26.1, the following items which have already been reproduced in the appendices to the petition for a writ of certiorari are not reproduced again in this Joint Appendix:

Petition Page

Opinion (W.D. Mich. Aug. 25, 1986) 18a

Judgment Order (W.D. Mich. Aug. 25, 1986) 77a

Opinion Denying Motion for Partial New Trial and to Alter and Amend Judgment (W.D. Mich. June 17, 1987) 81a

Judgment Order (W.D. Mich. June 17, 1987) 87a

Opinions (6th Cir. Aug. 14, 1989) 1a

Order Granting Leave to File Petition for Rehearing Out of Time (6th Cir. Sept. 19, 1989) 89a

Order Denying Rehearing (6th Cir. Nov. 7, 1989) 90a

RELEVANT DOCKET ENTRIES

In the United States District Court for the Western District of Michigan, Case No. G78-346-CA1

Docket No.	Date	Proceedings
1	May 22, 1978	Filed complaint
46	Apr 25, 1979	Filed Plaintiffs' Amended Complaint
78	Feb 9, 1981	Filed Opinion
79	Feb 9, 1981	Filed ORDER denying plaintiff's motion for SJ and denying defendant's motion to dismiss or for SJ
107	Aug 11, 1982	Filed OPINION
108	Aug 11, 1982	Filed ORDER in accordance w/ opinion that Deft's Unions' Motion to Dismiss or for summary judgment is denied, that pltfs' cross-Motion for partial summary judgment is denied, and deft Unions' Motion for abstention is denied
117	Feb 23, 1983	Filed Defts' Ferris Faculty Assoc. MEA-NEA, Mi Education Assoc., and Nat'l Education Assoc.'s, ANSWER to Amended Complaint

Docket No.	Date	Proceedings
120	Mar 1, 1983	Filed ANSWER of Deft Board of Control of Ferris State College to Pltf's Amended Complaint
146	Jan 15, 1985	Filed final PRETRIAL ORDER
147	Jan 23, 1985	Filed letter from LaJeunesse regarding correction of Pre-Trial Order
149	Feb 4, 1985	Filed deft Unions' Proposed Findings of Fact and Conclusions of Law
151	Feb 4, 1985	Filed deft Unions' Trial Brief
154	Feb 5, 1985	Filed pltfs' Suggested Findings of Fact and Conclusions of Law
155	Feb 5, 1985	Filed pltfs' Suggested Additional Findings of Fact and Conclusions of Law Regarding deft NEA
156	Feb 5, 1985	Filed pltfs' Trial Brief
162	May 20, 1985	Filed letter from LaJeunesse dated 5/17/85 w/attached Pretrial Order pages 7 & 11 and pltfs' Trial Brief page 17 to be inserted in previously filed pleadings

Docket No.	Date	Proceedings
163	Dec 19, 1985	Filed pltfs' Supplement to Trial Brief
	Jan 7, 1986	Bench Trial (1)
	Jan 8, 1986	Bench Trial (2)
	Jan 9, 1986	Bench Trial (3)
	Jan 10, 1986	Bench Trial (4)
	Jan 13, 1986	Bench Trial (5)
	Jan 14, 1986	Bench Trial (6)
	Jan 15, 1986	Bench Trial (7)
	Jan 16, 1986	Bench Trial (8)
	Jan 17, 1986	Bench Trial (9)
	Apr 23, 1986	Bench Trial Reconvened (10)
	Apr 24, 1986	Bench Trial continued (11)
	Apr 25, 1986	Bench Trial Continued (12) Trial ended this date
176	May 30, 1986	Filed deft Unions' Post-Trial Brief
178	May 30, 1986	Filed pltfs' Post-Trial Brief
179	Jun 6, 1986	Filed pltfs' Post-Trial Reply Brief
180	Jun 6, 1986	Filed defts' Post Trial Reply Brief
185	Aug 25, 1986	Filed OPINION
186	Aug 25, 1986	Filed JUDGMENT ORDER in accordance w/Opinion

Docket No.	Date	Proceedings
187	Sep 4, 1986	Filed MOTION by defts Ferris Faculty Assoc., MEA & NEA for Partial New Trial and to Alter or Amend Judgment
193	Jun 17, 1987	OPINION (6 pages)
194	Jun 17, 1987	JUDGMENT ORDER in accordance w/Opinion that defts' Motion for Partial New Trial and To Alter or Amend Judgment is denied.
195	Jul 9, 1987	NOTICE OF APPEAL by defts
196	Jul 23, 1987	NOTICE OF CROSS-APPEAL by pltfs

In the United States Court of Appeals for the Sixth Circuit, Case No. 87-1700

Docket No.	Date	Proceedings
1	07/22/87	NOTICE OF APPEAL, filed [87-1668]
3	07/29/87	NOTICE OF CROSS APPEAL, filed [87-1700]
19	12/10/87	STIPULATION: Rule 42(b), voluntary dismissal [87-1668]

Docket No.	Date	Proceedings
20	12/16/87	ORDER: appeal dismissed-Rule 42(b), Rule 8(b) [87-1668]
	02/03/88	BRIEF/APPELLANT
33	6/6/88	BRIEF/APPELLEE
	06/24/88	REPLY BRIEF/APPELLANT
	06/28/88	JOINT APPENDIX (5) in 5 vols.
	10/20/88	CAUSE ARGUED
44	08/14/89	OPINION: affirmed
	08/14/89	JUDGMENT
46	08/29/89	PETITION FOR REHEARING EN BANC by appellant
47	08/30/89	MOTION/APPELLANT: for extension of time to file petition for rehearing en banc
48	09/19/89	ORDER: motion of appellants for leave to file petition for rehearing one day out of time granted
51	10/16/89	RESPONSE/APPELLEE: to #46

Docket No.	Date	Proceedings
52	11/07/89	ORDER: petition for re-hearing en banc denied

AMENDED COMPLAINT
[R.46, filed Apr. 25, 1979]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

James P. Lehnert; Elmer S. Junker; James E. Lindsey; Sam C. Peticolas; John R. Schauble; Theodore D. Speerman,

Plaintiffs,

v.

The Ferris Faculty Association - MEA-NEA; Michigan Education Association; National Education Association of the United States; The Board of Control of Ferris State College; S. Eugene Bychinsky; Robert L. Ewigleben; Earl D. Gabriel; Robert P. Gerholz; Fran Harris; Delbert D. Long; Robert C. Redman; Thomas P. Scholler; Patricia M. Short; Steven L. Thomas,

Defendants.

Civil Action
No. G78346CA(1)

AMENDED COMPLAINT

I. Jurisdiction

1. This court has jurisdiction over the claims for relief stated herein by virtue of 28 U.S.C. § 1343 and 28 U.S.C. § 1331 in that:

a. the claims for relief arise under laws of the United States providing for the protection of civil rights, to wit: 42 U.S.C. §§ 1983, 1985, 1986; and

b. the claims for relief arise under the Constitution and the laws of the United States, to wit: Article I, Section 10, clause 1, and the first and fourteenth amendments and the amount in controversy, as to each plaintiff, exceeds $10,000, exclusive of interest and costs.

II. Parties

2. Plaintiffs are residents of the United States and the State of Michigan. Plaintiffs James P. Lehnert, Elmer S. Junker, James E. Lindsey, Sam C. Peticolas, and John R. Schauble are tenured members of the faculty of Ferris State College (Ferris State), a state supported institution of higher learning. Plaintiff Theodore D. Speerman retired from that faculty effective November 22, 1978.

3. Defendant Ferris Faculty Association (FFA) is a labor organization having as its membership certain members of the faculty of Ferris State. The FFA is an unincorporated association and maintains its principal place of business at 220 1/2 S. Michigan Avenue, Big Rapids, Michigan 49307. Under color of law, to wit: Mich. Comp. Laws § 423.211, the FFA is the exclusive representative of the faculty of Ferris State for the purpose of bargaining collectively with the Board of Control of Ferris State College (Board of Control).

4. Defendant Michigan Education Association (MEA) is a labor organization affiliated with the FFA and the National Education Association (NEA). The MEA is an unincorporated association and maintains its principal place of business at 1216 Kendale Boulevard, East Lansing, Michigan 48823.

5. Defendant NEA is a labor organization affiliated with the FFA and the MEA. The NEA is a body corporate and maintains its principal place of business at 1201 16th St., N.W., Washington, D. C. 20036.

6. Defendant Board of Control is a body corporate established by the laws of Michigan, to wit: Mich. Comp. Laws § 390.802, and is empowered to control and manage Ferris State. The members of the Board of Control are appointed by the Governor by and with the advice and consent of the Senate.

7. Defendants Earl D. Gabriel, 26880 Constance Avenue, Dearborn Heights, Michigan 48127; Robert P. Gerholz, 1704 Crescent Drive, Flint, Michigan 48503; Fran Harris, 8120 East Jefferson, Detroit, Michigan 48214; Delbert D. Long, 412 Ives Avenue, Big Rapids, Michigan 49307; Robert C. Redman, P. O. Box 417, Lake City, Michigan 49651; Thomas P. Scholler, 1423 Buckingham, Birmingham, Michigan 48008; Patricia M. Short, 1972 Trinity Lane, Jackson, Michigan 49201; and Steven L. Thomas, 3904 Raleigh, Okemos, Michigan 48864, are members of the Board of Control, and reside at the indicated addresses. These defendants are sued in both their individual and official capacities.

8. Defendant Robert L. Ewigleben is the President and chief executive officer of Ferris State, and is sued in both his official and individual capacities.

9. Defendant S. Eugene Bychinsky is Vice President, Personnel of Ferris State College, and is sued in both his official and individual capacities.

III. Claims for Relief

First Claim for Relief

10. Pursuant to Mich. Comp. Laws § 423.210, since April 25, 1974 successive collective bargaining agreements between the Board of Control and FFA have contained an agency shop agreement requiring plaintiffs and other faculty members to pay to the FFA, as a condition of employment, a service fee in an amount equivalent to the dues uniformly required of FFA members. Pursuant to these agency shop agreements, Ferris State was obliged to terminate faculty members who refused to pay such fees. The terms of the agency shop agreement remained the same in all essential respects until June 30, 1978, when the 1975-78 collective bargaining agreement expired. A true and accurate copy of the 1975-78 agency shop agreement between the FFA and the Board of Control is annexed hereto as Exhibit A.

11. On March 10, 1979, the Board of Control approved the collective bargaining agreement currently in effect. The current agreement requires those plaintiffs still on the Faculty at Ferris State and other faculty members to pay to the FFA as a condition of employment a service fee equivalent to union dues less any amounts not permitted by law. The current agreement further provides that if a faculty members fails to pay the service fee, the FFA shall certify to Ferris State that the amount of the service fee includes only those items authorized by law, and Ferris State shall automatically deduct the service fee from the faculty members' pay and transmit the money to the FFA. The deduction may be made without the faculty members' authorization and the agreement does not require a hearing of any kind prior to the deduction. A true and accurate copy of the current agency shop agreement is attached hereto as Exhibit B. (This agreement will sometimes hereinafter be referred to as the "current agreement" and preceding agreements will be referred to as the "previous agreements".)

12. The automatic deduction described in paragraph 11 is authorized by the laws of Michigan, to wit: Public Act 390, L. 1978. In pertinent part, Public Act 390 provides:

> With the exception of those deductions required or expressly permitted by law or by a collective bargaining agreement, an employer shall not deduct from the wages of an employee, directly or indirectly, any amount without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction.

13. Defendants have enforced the previous agency shop agreements against plaintiffs thereby compelling plaintiffs to pay to the FFA an amount equivalent to FFA membership dues as a condition of their continued employment at Ferris State. Unless enjoined, defendants will enforce the current agreement.

14. Plaintiffs have notified, and by this complaint do again notify, defendants of their objection to the use, even temporarily, of any portion of their service fees exacted pursuant to the agency shop agreements for purposes other than bargaining collectively with the Board of Control, administering the contract with the Board of Control, and adjusting grievances arising thereunder.

15. Pursuant to and in furtherance of various agreements among defendants FFA, MEA, and NEA, a substantial portion of the service fees collected from plaintiffs pursuant to the agency shop agreement have been and will continue to be transmitted by defendant FFA to its affiliates MEA and NEA. Defendants FFA, MEA, and NEA have spent and will continue to spend substantial portions of the service fees exacted from plaintiffs to support activities other than collective bargaining with the Board of Control, administering the contract with the Board of Control, and adjusting grievances arising thereunder, including, but not limited to, the following:

(a) to support by direct and indirect financial expenditures and other contributions the political campaigns of candidates for public office including candidates for federal, state, and local offices;

(b) to support directly and indirectly public relations and lobbying by various individuals, groups, associations, and organizations intended: (1) to influence the general public to vote; (2) to influence legislative bodies to enact statutes, laws, or regulations; (3) to influence executive or administrative officials to exercise their authority to the legal, economic, or other special advantage of the FFA, MEA, and NEA, their allies, individual members, and adherents; or (4) otherwise to advance particular philosophical, scientific, or political, economic and social doctrines, ideologies, or programs;

(c) to propagate political and economic doctrines, concepts, ideologies, and legislative programs which are opposed by plaintiffs, thereby imposing upon them conformity to these doctrines, concepts, ideologies, and programs;

(d) to support meetings, conventions, and other activities exclusively limited to officers, agents, employees, and formal members of defendant FFA and affiliated labor organizations wherein (1) are introduced, debated, adopted, modified, or repealed organizational rules, regulations, policies, platforms, and programs to determine the actions of or otherwise control or influence defendant FFA and affiliated labor organizations; and (2) officers, agents, representatives, and others are selected by vote, appointment, or otherwise, to determine, administer, and enforce said rules, regulations, policies, platforms, and programs;

(e) to support strikes, walkouts, slow downs, boycotts, and other activity against public employers in the State of Michigan and elsewhere to the economic, professional and other detriment of plaintiffs;

(f) to cover the costs of publications, convention expenses, strike expenses and benefits, lobbying activities,

contributions to organizations and individuals, recreational, educational, economic, social, and other activities and various other programs unrelated to collective bargaining;

(g) to make available for the aforementioned activities and purposes (1) material supplies of said defendants; and (2) the services of the officers, agents, employees, and formal members of said defendants; and

(h) to take other action burdensome, vexatious, and costly to plaintiffs.

16. As applied, Mich. Comp. Laws § 423.210, and the agency shop agreements between the FFA and the Board of Control, on its face and as applied, permit defendants FFA, MEA, and NEA to use, at least temporarily, the service fees exacted from plaintiffs for purposes other than bargaining collectively with the Board of Control, administering that agreement, and adjusting grievances arising thereunder.

17. As applied, Mich. Comp. Laws § 423.210, and the agency shop agreements between the FFA and the Board of Control, on its face and as applied, are unconstitutional in that:

(a) they create a chilling effect upon plaintiffs' exercise of their freedoms of speech, thought, conscience, assembly, petition, and association guaranteed by the first and fourteenth amendments to the Constitution of the United States.

(b) they work a prior restraint upon plaintiffs' freedoms of speech, thought, conscience, assembly, petition, and association in violation of the first and fourteenth amendments to the Constitution of the United States.

[¶¶ 18-24 omitted in printing as not relevant to the issues being briefed]

Basis For Relief

25. As a result of the defendants' unlawful actions described in the foregoing claims for relief, plaintiffs have suffered monetary damages in the amount of the service fees that they have been required to pay to defendant FFA. Plaintiffs have also suffered, and will continue to suffer, irreparable injury unless equitable relief is granted restraining and enjoining the violations described in the foregoing claims for relief. Plaintiffs have no adequate remedy at law.

Prayer For Relief

Wherefore, plaintiffs pray that this Court take jurisdiction of this cause and issue relief as follows:

1. A judgment based upon the actual, current, and bona fide controversy between the parties as to the legal relations among them, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring:

a. that Mich. Comp. Laws § 423.210, as applied, and the agency shop agreements between the FFA and the Board of Control, on their face and as applied, unconstitutionally abridge plaintiffs' rights under the first and fourteenth amendments to the Constitution of the United States;

[sub-¶¶ b & c omitted in printing]

2. Injunctive relief permanently enjoining and restraining defendants from:

a. enforcing the current agency shop agreement between the FFA and the Board of Control against plaintiffs; and

b. depriving plaintiffs of their liberty or property without due process of law.

3. Award plaintiffs monetary damages in the amount of the service fees unlawfully exacted from them.

4. Award plaintiffs exemplary damages sufficient to deter future violations of plaintiffs' rights.

5. Award plaintiffs a reasonable attorney's fee pursuant to 42 U.S.C. § 1988.

6. Award such other and further relief as the Court deems just and appropriate.

[Signature block, Exhibits A-C, &
proof of service omitted in printing]

DEFENDANT UNIONS' ANSWER TO AMENDED COMPLAINT
[R.117, filed Feb. 23, 1983]

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Title omitted in printing]

NOW COME Defendants Ferris Faculty Association-MEA-NEA, Michigan Education Association, and National Education Association, by their attorneys, Foster, Swift, Collins & Coey, P.C., and for their answer to the amended complaint say as follows:

I. Jurisdiction

1. These Defendants admit that this Court has concurrent jurisdiction with Michigan courts and the Michigan Employment Relations Commission and that:

a. Plaintiffs have asserted that they are entitled to relief under the federal civil rights statutes alleged, and

b. These Defendants admit that Plaintiffs claim to be entitled to relief under the Constitution and laws of the United States, but these Defendants deny as untrue the allegation that the amount in controversy as to each Plaintiff exceeds $10,000.00, exclusive of interest and costs.

II. Parties

2. Admitted on information and belief.

3. Admitted (except as to the incorrect address and the incorrect allegation that the FFA is an unincorporated association) so long as it is understood that by "FFA" Plaintiffs are referring to FFA-MEA-NEA.

4. These Defendants admit the allegations contained in paragraph 4 except the untrue allegation that MEA is an unincorporated association, as to which these Defendants aver that the MEA is a nonprofit corporation.

5. Admitted.

6. These Defendants make no answer to the allegations contained in paragraph 6 inasmuch as they pertain to other Defendants.

7. These Defendants make no answer to the allegations contained in paragraph 7 inasmuch as they pertain to other Defendants.

8. These Defendants make no answer to the allegations contained in paragraph 8 inasmuch as they pertain to other Defendants.

9. These Defendants make no answer to the allegations contained in paragraph 9 inasmuch as they pertain to other Defendants.

III. Claims for Relief

10. These Defendants admit the substance of the allegations contained in paragraph 10 but allege that the collective bargaining agreements speak for themselves and are the best evidence of their content.

11. These Defendants admit the substance of the allegations contained in paragraph 11 but allege that the collective bargaining agreements speak for themselves and are the best evidence of their content.

12. Admitted.

13. These Defendants admit the allegations contained in paragraph 13 and in further answer to said paragraph these Defendants allege that they have enforced the current agreement in accordance with Abood v Detroit Board of Education, 431 U.S. 209, 52 L. Ed. 2d 261, 97 S. Ct. 1782.

14. Admitted.

15. These Defendants admit the allegations contained in the first sentence of paragraph 15 so long as it is understood that by FFA Plaintiffs are referring to the Ferris Faculty Association-MEA-NEA, the exclusive bargaining representative for the faculty at Ferris State College. Defendant Ferris Faculty Association-MEA-NEA denies as untrue the allegations pertaining to it contained in the second sentence of paragraph 15, including subparagraphs (a) through (h). In further answer to said paragraph Defendants MEA and NEA admit that they have spent some portions of the service fees exacted from Plaintiffs to support activities other than collective bargaining with the Board of Control of Ferris State College, administering the contract with that Board of Control, and adjusting grievances arising

thereunder (a concept different from whether such expenditures are related to collective bargaining, contract administration or grievance adjustment) including some of the expenditures referred to in subparagraphs (a), (b), (d), and (g). These Defendants also admit that the MEA and NEA have spent some portions of the service fees exacted from Plaintiffs in support of political activities but these Defendants deny that in doing so they have imposed upon Plaintiffs conformity to any political issues or candidates. In further answer to said paragraph these Defendants admit that the MEA and the NEA have on occasion spent a portion of the service fees exacted from Plaintiffs to support expenditures of the type generally referred to in subparagraph (e), but these Defendants deny that same has been to the economic, professional and other detriment of Plaintiffs. In further answer to said paragraph these Defendants admit that the MEA and the NEA have spent some portions of the service fees exacted from Plaintiffs to cover some of the items described in subparagraph (f), but these Defendants allege that they have made available to Plaintiffs a remedy, consistent with Abood, supra, for the rebate of any portion of the service fee spent on political or ideological activity unrelated to collective bargaining, contract administration grievance adjustment or employee representation, and these Defendants further deny that they have taken action burdensome, vexatious and costly to Plaintiffs.

16. Admitted on information and belief for several reasons, including that Plaintiffs' vexatious attack on the agency shop provisions in the collective bargaining agreements at Ferris State College has resulted in costs to the union Defendants far in excess of the amount of service fees exacted from Plaintiffs.

17. Denied as untrue.

[¶¶ 18-24 omitted in printing]

25. Denied as untrue.

WHEREFORE, these Defendants request that the complaint be dismissed and that they be awarded their costs and reasonable attorney fees.

[Signature block & proof of service
omitted in printing]

TRIAL TRANSCRIPT, VOL. I,
TESTIMONY OF PETER McNENLY
Jan. 7-8, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[5]Q. Would you state your address and employment for the record, please?
A. I reside at 2503 Carey, Lansing, Michigan, and I am employed by the Michigan Education Association.

Q. In what capacity?
A. I am director of Legal Services.

* * * *

[16] [MR. SCHMEDLEN:] * * * If you would just identify what Exhibit No. "I" is, Mr. McNenly?

THE WITNESS: This is the collective bargaining agreement between Ferris State College and the Ferris Faculty Association, covering the period of 1981 to 1984.

* * * *

[28] MR. SCHMEDLEN: Your Honor, I would also offer "I" and "A" that I had previously identified that I don't think there is any objection to.

MR. LAJEUNESSE: I think that is --

THE COURT: "I" and "J."

[29] MR. SCHMEDLEN: "I" and "J." I am sorry.

THE COURT: Is there an objection?

MR. LAJEUNESSE: No objection.

THE COURT: "I" and "J" are received.

* * * *

[34]Q. Now that footnote deals with "Teacher's Voice." What is the "Teacher's Voice"?
A. That is the general publication of the Michigan Education Association. It is an internal newspaper.

* * * *

[35]Q. Could you tell me what, could you tell me what process you utilized in arriving at the non-chargeable figure that appears at footnote seven?
A. Well, we examined a content analysis that was previously done by either the representative of plaintiffs or the charging party in the Bridge Port-Spalding case, and we worked off of that in making our calculations.

Q. Very briefly, why did you use --

MR. LAJEUNESSE: Excuse me, Your Honor.

MR. SCHMEDLEN: --did you use that document?

MR. LAJEUNESSE: If I may make a general objection. The witness has a number of times used an undefined term. He keeps saying we and our, and it is not clear to me, and I don't believe it is clear to the Court.

THE COURT: There is some merit to that objection. What do you mean when you say we? You said we in the last instance about the reaction to the plaintiffs with regard to the paper.

THE WITNESS: I took a copy of the content analysis and went through and examined it. And it was from my examination and of that document that I was able to derive a figure that appeared in this footnote.

THE COURT: So you did it?

THE WITNESS: Yes.

[36] THE COURT: "We" in that case was Papal, one?

THE WITNESS: Yes.

BY MR. SCHMEDLEN:
Q. Did you actually review the "Teacher's Voice" editions that were published that year?
A. Yes, I sat down with the content analysis and our copies of the "Voice" and went through the documents.

THE COURT: The content analysis as I understood it was done by the plaintiffs or representatives of the plaintiffs?

THE WITNESS: Right.

THE COURT: And the content analysis had to do with what exactly?

THE WITNESS: We measured column inches. And it had a number of categories in it. And then it placed within each

category all of the stories or issue -- all of the stories that were in the "Voice" along with the number of column inches for each story, and then totalled up, first of all, in subtotal fashion I believe how many column inches were devoted to these various categories that were contained in this study --

THE COURT: I see.

THE WITNESS: And that is the document that I worked off of.

BY MR. SCHMEDLEN:
[37]Q. By way of summary, was the content analysis used by you for any other than mathematical purposes?
A. No, the math work had already been done in the study, and rather than reinvent the wheel I checked, spot-checked the figures, and they appeared to be correct. So that the measurements of column inches for the various stories as far as I could determine was accurate.

* * * *

[39]Q. I am moving now to the footnote nine which addresses awards and recognition.. Can you tell me why that was determined on this reduced fee sheet to be a non-chargeable or an arguably non-chargeable activity?
A. This particular item relates back to our first, or I should say, our earlier, relatively early rebate calculations. And because some of the criteria for the granting of the [40] awards did not seem to be related necessarily to compliance with MEA goals and objectives, I decided that this was one item that would be arguably non-chargeable.

Q. Is it your position that these awards and other matters in that program are in fact political or ideological and also unrelated to collective bargaining?
A. Well, I think you can make some arguments both ways on that. This is an example of one that we just decided to concede on.

* * * *

[75]Q. Mr. McNenly, in your role as director of Legal Services have you had occasion to review the motion in limine and then the renewed motion in limine filed by the plaintiffs in this case?
A. Yes, I have.

Q. In that context can you tell me whether you used the term, quote, "cost pool," unquote, in any fashion?
A. I have seen that or that phrase used.

Q. How is that phrase used in connection with this motion in limine concept that is raised by the plaintiffs?
A. Well, as I understand the purpose of the motion was to exclude evidence on expenditures that were not directly [76]related to or that we could not show are directly related or incurred on behalf of the Ferris Faculty Association.

THE COURT: So what does cost pool mean?

THE WITNESS: Once again, as I understand the concept, the concept of cost pool means that in order for an item to be chargeable you need to show that the expenditure was actually incurred on behalf of the particular bargaining unit in question.

BY MR. SCHMEDLEN:
Q. Now realizing that, as has been alluded to a number of times, that the parties differ on that legal issue, factually can you tell me whether the concept of a cost pool or a motion in limine type of approach could be actually carried out based upon what you have done in the years since Abood was rendered?
A. I don't believe it could.

Q. And could you describe why that is?
A. Well, for many of our programs in my opinion it is virtually impossible to allocate or show the particular activity which may be beneficial in a general sense and be tied to a particular bargaining unit. An example would be one, when one of our

lobbyists lobbies on behalf of appropriations for higher education in this state. I don't know of any, in my opinion, good way that you can make an allocation between the Ferris State College and the other [77]institutions that derive benefits from that lobbying activity.

* * * *

[80] THE WITNESS: That was the figure as I understand it that I would have to be, to prove was directly related to Ferris State College in that particular year. And then took a look at the various programs of the organization, the MEA [81]and some of our programs are more amenable to a cost pool analysis than others. Probably the best example of that would be the legal service program.

Our record-keeping system is set up so that we categorize our expenditures by employer, and so that is relatively easy for us to pull out the expenditures, legal service expenditures incurred and expended on behalf of Ferris Faculty Association.

* * * *

* * * *

[85]Q. Is it possible to directly trace every dollar to a specific bargaining unit?
A. I don't believe it is.

* * * *

[96]Q. Mr. McNenly, the Michigan Education Association is not itself the exclusive representative of the faculty at Ferris State College, is it?
A. That's right. The exclusive rep is the Ferris Faculty Association.

Q. And so the same answer would apply with regard to the National Education Association?
A. Yes.

* * * *

[100]Q. Mr. McNenly, the Ferris Faculty Association is the exclusive representative of the employee faculty members at Ferris State College for what purposes?
A. For collective bargaining, a negotiated contract, to administer that contract.

Q. And those purposes are defined by the Public Employment Relations Act?
A. Yes.

* * * *

[171] MR. LAJEUNESSE: Your Honor, I am handing the witness what has been marked plaintiffs' Exhibit No. 594. There is a [172]plaintiffs' 594 in the bench books we have provided the Court but yesterday Mr. McNenly testified that he used a copy of that exhibit in doing his computations with regard to the "Teacher's Voice," and that this is that version of the survey. It is the one upon which Mr. McNenly made his own notation. We are substituting that by agreement with the unmarked copy of plaintiffs' Exhibit No. 4.

THE COURT: Would you --

THE WITNESS: Yes, this is the content analysis that I referred to yesterday.

BY MR. LAJEUNESSE:
Q. Content analysis of "Teacher's Voice"?
A. Yes. For the period of September 7th, 1981 through August 16th, 1982.

MR. LAJEUNESSE: I move the admission of plaintiffs' 594, Your Honor.

MR. SCHMEDLEN: Pursuant to that agreement that he alluded to, no objection.

THE COURT: 594 is received.

MR. SCHMEDLEN: Your Honor, let me just clarify that the agreement indicated that the marked-up one with the "NC's" on it can come in because it was the subject of testimony. I think the record should reflect, however, that the document is being stipulated to in terms of its admission for the purpose of the mathematical calculations only. There [173]is in the document as well some opinion that we don't share in terms of descriptions or whatever, but we have no objection to its admission for the purpose of the actual calculations of the inches.

THE COURT: Well, it wasn't limited. What is the position of the plaintiff, plaintiffs?

MR. LAJEUNESSE: Your Honor, I think Mr. McNenly testified yesterday that he had no quarrel with the measurements contained in this document. He also does not question as I understand his testimony the fact that it is comprehensive and lists all of the article contained in the newspaper.

THE COURT: That is the question. For what purpose was it admitted?

MR. LAJEUNESSE: It is being offered as, two purposes, one showing the computation that was made by Mr. McNenly, and, two, as a summary of the articles contained in defendants' Exhibit No. A-4 which are the issues of "Teacher's Voice" for that year. I am not offering it as proof that items categorized, other particular categories, are chargeable or non-chargeable.

MR. SCHMEDLEN: I understand, and as to his first purpose there is no objection. I appreciate his indicating that it is not offered for the categorization, and that is why, my only point is as to the second point on the summary [174]we don't agree with the summaries where he is calling something collective bargaining and he is calling something something else. We have no problem with its measurement, measuring of the different column inches on all of these, and that has been testified to. We don't think that the categories make any sense,

and if that is going to be offered for that purpose then we want to cross-examine the person that made the categories. He is not -- the categories, you know, we do not stipulate to. We don't think they are accurate.

THE COURT: When you keep saying categories, are you talking about the material called, material in the middle?

MR. SCHMEDLEN: Methodology. It is the first after the cover sheet.

THE COURT: Oh, I see.

MR. SCHMEDLEN: Three pages. Everything after that is fine. You see, it says this is collective bargaining, that is strikes. We don't agree with that. We think that the articles and the titles of the articles speak for themselves, and they were properly measured. We just don't agree to the way they have been summarized, and we object to the part, the summarized --

THE COURT: Who prepared those two pages? Do you know?

[175] MR. SCHMEDLEN: Yes, I do. One of Mr. Lajeunesse's fellow employees in the National Right to Work Legal Defense Foundation.

THE COURT: Well, the objection is well taken. The Court will not consider Exhibit No. 594 as far as the first two pages are concerned, the three pages are concerned, but will consider the matters starting on numbered page four. Somebody has written in the number four under the general headings of issue, pages, material, and column inches, which is what I thought it was for in the first place. I didn't even see the first two pages.

MR. SCHMEDLEN: That is correct. Your Honor, I apologize for overlooking for a minute the rest that was in there. I had forgotten.

MR. LAJEUNESSE: That is all it is offered for at this point.

THE COURT: I assumed that.

* * * *

MR. LAJEUNESSE: Your Honor, I am handing the witness what has been marked for identification as plaintiffs' [176]Exhibit No. 612, and asking Mr. McNenly to identify that exhibit.

MR. SCHMEDLEN: Your Honor, as an attempt to save time we will stipulate those were the "Teacher's Voice" copies for that entire year. We do not have an objection to their admissibility, but we don't dispute what they are, and the defendant, what he is going to accomplish, I don't know if he needs the witness to do that. They are the documents summarized in that column inch study.

THE COURT: The authentication is done. Do you want it admitted? And if you want it admitted, for what purpose?

MR. LAJEUNESSE: Your Honor, I move their admission for the purpose of permitting the Court to be able if it wishes to validate the correctness of Mr. McNenly's characterization of the chargeability and non-chargeability of the contents of those papers. He testified that he examined them in relationship to the summary exhibit which has just been introduced in order to reach his 20 percent.

In addition, I offered them, he testified that this is sufficient an official publication of the defendant MEA and the articles in this newspaper describe the activities of the union. It would be helpful to the Court in determining the activities, the nature of the activities, in which the union is engaged.

* * * *

[178] THE COURT: True. Mr. Lajeunesse, do you have some quarrel with material that you yourself put in, Exhibit No. 594, with regard to the description of materials and the column mentioned?

MR. LAJEUNESSE: I don't have a quarrel with the description of materials, Your Honor, but I don't know how the Court can itself determine whether Mr. McNenly has properly categorized an article as chargeable or non-chargeable without looking at the articles themselves.

THE COURT: You may be right. The Court will admit Exhibit No. 612. The Court does not intend to read every single article in there, and I think there is considerable merit to the objection made by the defendants, considerable merit, but since I haven't had an opportunity to look through Exhibit No. 594 I can't say that Exhibit No. 612 is not relevant. That is why I admitted it. Okay, go ahead.

* * * *

TRIAL TRANSCRIPT, VOL. II,
TESTIMONY OF PETER McNENLY
Jan. 9, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[244]Q. In 1981-1982, were support personnel in the same bargaining units as teaching personnel?
A. As a general matter, no.

Q. At a given institution you would have a separate bargaining unit for teaching personnel and non-teaching personnel. Is that correct?
A. Yes. Once again as a general rule.

Q. Why was that?
A. Because under the rules of the Michigan Employment Relations Commission it is once again generally determined that certified personnel are an appropriate bargaining unit [245]and non-certified personnel belong in a separate unit.

* * * *

[249]Q. I believe you testified yesterday, Mr. McNenly, that the Legal Services department provided assistance in 1981-1982 on retirement matters. Is that correct?
A. Provided representation to members in the handling of retirement disputes and problems if that is what you mean by retirement matters, yes.

Q. Were those members retired members?
A. In some cases they were in the process of retiring and there was a dispute as to the accumulated credit, for example, and so we have people who are just, have approached the age of retirement, and they go down to the retirement system, and they find after years of service they are not as they expected them to be. So they would be in that category. As well as retirees who later have a dispute over the amount [250]of the benefit.

Q. So that there are some of the people that you provide legal assistance in 1981-1982 who were people that were already retired?
A. Yes, former members.

Q. And those individuals were not in a bargaining unit represented by an MEA affiliate at that time, were they?
A. They were not currently employed.

Q. I believe you also testified earlier, Mr. McNenly, that the Legal Services department is on a fairly regular basis involved in litigation under the Michigan Teacher Tenure Act. Is that correct?
A. Yes, it is.

Q. And was so in 1981-1982?
A. Yes.

Q. Are the faculty of the Ferris State College covered by the Michigan Tenure Act, Mr. McNenly?
A. No, they are not.

Q. Does the state Tenure Commission have jurisdiction over the faculty of Ferris State College?
A. No.

* * * *

[266] [THE COURT:] The major dispute is which of those activities are chargeable, which are not chargeable, and why or why not; and that it strikes me is a question, a mixed question of law and fact, more law than fact. * * * *

* * * *

[296]Q. Mr. McNenly, I am handing you two documents which are marked for identification as plaintiffs' 68 and plaintiffs' 67. I got the order backwards. I am not intending, Your Honor, to put these into evidence. I just want to, briefly for the witness, to ask the witness a question about these documents. They are documents which are referred to by this witness' direct testimony.
A. Exhibit No. 68 was a copy of one of the monthly reports that we used in the program, and it contains a listing in this case of the open cases for the month of August, 1982, and involving a coordinating council which included various Ferris Faculty Association.

Exhibit No. 67 is a summary of the cases that were opened during the '81-82 fiscal year and involving Ferris Faculty Associa-

tion. My summary of those cases appears on [297]the first two pages, and actually the first three pages.

And then attached to that are copies of a form which we used to authorize cases entitled a legal service authorization, and also a work assignment form to one of my staff attorneys on a case, at Ferris -- as I said, a number of legal authorizations that went to the outside law firms, and they relate to the cases which are summarized on the first couple of pages.

I also see a work assignment to one of my other staff attorneys, and finally a work assignment to staff attorney Mary Jobe (ph.) involving case number 20360-C.

Q. Mr. McNenly, are these the records to which you referred yesterday, the day before, in your testimony when you said that you would, you could make a determination of the legal fees expended with regard to a particular bargaining unit?
A. These are a portion of our record keeping system. It is not a complete example of our accounting system, of our own internal accounting system.

Q. What are the numbers reflected here? Where are they derived?
A. Okay. For each piece of legal work, each case is a problem, and we assign one of these five digit numbers. Those numbers originated during this period of time from myself, and I have a pre-numbered pad of numbers, and they are torn off, and we fill out certain paper work, ah, to initiate a case. [298]And that is filled up by myself, and that is turned over to the secretary, and when the case file is opened, and we take that information and enter certain parts of that information into our data base, our computerized reporting system data base.

Q. What dollars are reflected? What is the source of those dollars? Is that --
A. The dollars that appear on the summary are taken off of the bills that we receive from our attorneys each month in the case of the outside attorneys or are taken off of the attorney time sheets in case of staff attorneys.

Q. So that items from two different sources are accumulated and summarized on these exhibits?
A. Yes.

Q. Isn't that a time-consuming process?
A. No. It is a highly automated process, currently that occupies given the fact that our program currently consists of somewhere between 900 and 1,000 active cases of any kind -- most of this work, in fact, virtually all of this work is done by my assistant and occupies, well, while a substantial part of her time, occupies I will not say all of her time.

In addition to that, my secretary and the other two secretaries in my department will spend varying amounts of time on maintaining them, processing and preparing the forms necessary to keep the system going.

[299]Q. The time involved in accumulating this data, keeping these records, is reduced by the, by virtue of the fact that you have the system in place. Is that correct?
A. The burden of this system is reduced by the fact that I don't have to maintain the system. I can have a secretary do it, and I have been able to delegate those responsibilities to someone else. Those clerical duties.

Q. There is also time spent by the attorneys themselves filling out the time sheets. Is that correct?
A. Yes.

Q. But you don't consider that burdensome?
A. No.

Q. Looking just briefly at plaintiffs' 67, Mr. McNenly, the cases listed there, are those all cases involving the Ferris State College bargaining unit?
A. Yes.

* * * *

TRIAL TRANSCRIPT,
TESTIMONY OF WARREN D. CULVER
Jan. 9, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[2]Q. Your employment currently?
A. I am Associate Executive Director for MEDNA, M-E-D-N-A, Michigan Education Data Network Association.

Q. What is its relationship with the Michigan Education Association?
A. It is one of the organizations that are part of the MEA organization, and we provide a variety of services to the MEA, data processing, labor relations, personnel, accounting finance, and membership processing.

Q. Keeping in mind the Court's desire to get to the heart of the issue, could you very briefly describe when you started work for the MEA and trace your history very briefly to the end of the 1981-82 year?
A. I started as an urban executive director in Jackson in 1969 with the institution of the UniServ program in 1970. I became a UniServ director in Jackson County, and 1972 I moved to Grand Rapids as the UniServ manager for Western Michigan.

In 1973 I moved to the Detroit area to be [3]UniServ manager in Oakland and Genesee Counties, and when we reorganized I, I became UniServ manager for Fort Wayne, Oakland, Macomb, and St. Clair Counties.

And in 1977 I moved to Lansing to become Director of Public Affairs, Communications, and in 1981 of the reorganization, I became the director of the UniServ program for the state.

* * * *

[4]Q. Now at the end of the 1980-81 year, what was your position again in the MEA?
A. I was a director of Public Affairs and Communications.

Q. And what area of the MEA would be the area where the political consultants or lobbyists are employed with the MEA?
A. They would be employed within the Public Affairs end of the Public Affairs and Communications.

Q. Did you have any involvement in the preparation for the budget of '81-82 years in the Public Affairs, Communications division?
A. Yes, I did. In fact, I was probably the principal person in developing that budget.

Q. Have you ever heard the term "Preserve Public Education" that appears in numerous of the documents either marked or introduced?
A. Yes, I have.

Q. Can you describe for the Court briefly what the "Preserve Public Education Program" was in 1981-82?
A. The "Preserve Public Education Program" was an attempt on the part of the association to develop meaningful coalitions in the various communities so that we could pass millages, fight ballot issues, and do the kinds of things that are absolutely necessary fund public education, [5]so that we have some reason to be able to continue to exist, bargain the contracts, and gain some benefits for our members.

Q. So, specifically, what causes you to tie in your answer? Bargaining contracts, in that -- lobbying and -- in other words how, how do they relate?
A. Well, I think that one of the most important things that has to be understood about public employee bargaining is that the amount of money that we get comes from either local property taxes, state taxes and some from federal tax. And if we have no way of raising that money, which is all allocated through the legislative process or an election, then we have no way to bargain.

So it is really the front line bargaining of our contracts.

* * * *

[7]Q. Is higher education funding in Michigan structured differently from the funding for K-12 education? That is, kindergarten through high school?
A. Yes, it is. It is substantially different.

Q. Would you briefly describe the differences?
A. The X-12 funding for public schools is based on formula that was established many years ago. It is commonly known as the Crim-O'Neill formula.

THE COURT: The what?

THE WITNESS: Crim, Bobby Crim, C-r-i-m, and O'Neill is James O'Neill from Saginaw. And that is based -- it is an attempt to equalize local millage so that generally schools can be funded on a per pupil dollar amount at a relatively similar level. Higher education, however, works much differently, particularly the four-year colleges.

The constitutionally constituted college is, each receive an individual appropriation by the legislature, those being Wayne State, University of Michigan, Michigan State University.

The formula, the other four-year colleges, like Central Michigan, Ferris State, Grand Valley, received a four-year appropriation that is somewhat individual and [8]somewhat general.

The community colleges which are part of higher education have a formula that is different than K-12, but it is one that is applied to all of the community colleges.

* * * *

[37] THE COURT: I think there is a second part of the question that you haven't answered, and the second part interests me. How about a modified kind of time sheet in which the UniServ director only reported bargaining units that they were

working on in that day, or with on that day, and, or, assigning time as to that bargaining unit, without defining what it is that they were doing?

THE WITNESS: I never really thought of doing that, Your Honor, and I think there are a couple of reasons why I wouldn't feel that that would be very important to do right now.

In our larger UniServ units where they have 14 or 15 bargaining units, the relative time that they spend with the Kalamazoo teachers as opposed to Kalamazoo secretaries as opposed to Galesburg-Augusta teachers, really isn't a very relevant issue I don't think to the union.

I think the issues that are important to the union are do the contracts get bargained, do the arbitrations and grievances get processed and handled professionally and effectively. And the fact that we are [38]bargaining 30 percent of the contracts in the Kalamazoo area this year and not bargaining the other 60 percent because they are on first and second years of three-year contracts is a relatively unimportant issue.

And yet, if you were to look at those facts, I might see that Kalamazoo City because their bargaining contract is a very disproportionate share of the UniServ director's time, and it would look like Kalamazoo Valley Intermediate School District's personnel are getting absolutely no attention. So it really doesn't, it doesn't really track for union purposes.

What we really need to know is as a union, and a coordinating council, are all of the units getting serviced, and are their contracts getting bargained, and are their grievances getting handled, and arbitrations heard, and dismissals taken care of.

* * * *

TRIAL TRANSCRIPT,
TESTIMONY OF MITCHELL E. ROTH
Jan. 10, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[2]Q. Where are you employed?
A. With the National Education Association in Washington, D.C.

Q. And what capacity?
A. As a staff attorney in the Office of General Counsel.

[3]Q. And how long have you been employed in that capacity?
A. Since June of 1980.

* * * *

[27][Q.] Could you direct your attention to the defendant's Exhibit No. GGGG? I believe it is in a folder toward the end of the, of the book. It is blue, and you can pull it out so it can be used. Can you identify that?
A. Yes, this is the program accomplishment report that I was referring to for the 1981-82 fiscal year.

Q. Briefly, what is the purpose of the document?
A. What that document is, is a summary of activities within the programs of the NEA, what particular fiscal year, and some subprograms as well, and it reflects the amount that was budgeted for those programs, and the amount that was finally expended for those programs in that year.

THE COURT: Did you use this document in calculating what would happen if the Court ruled that strike activity was non-chargeable?

THE WITNESS: Strike activity.

MR. SCHMEDLEN: Strike activity or whatever.

THE COURT: What was it?

MR. SCHMEDLEN: Organizing activity.

THE COURT: Organizing activity. I am sorry. In general? Organizing activity. I am sorry.

THE WITNESS: Yes, yes.

THE COURT: Who prepared it?

THE WITNESS: The program accomplishment report is to my knowledge prepared in the, in the accounting division [28]or whatever --

THE COURT: In Washington?

THE WITNESS: In Washington.

THE COURT: Is it prepared annually?

THE WITNESS: Yes, it is.

MR. SCHMEDLEN: To save time, I don't think there has been an objection --

MR. LAJEUNESSE: No objection.

THE COURT: Well, do you want to offer it then, G --

MR. SCHMEDLEN: I will offer it.

THE COURT: GGGG?

MR. SCHMEDLEN: I apologize for interrupting.

THE COURT: GGGG, four G's, is received.

* * * *

TRIAL TRANSCRIPT, VOL. II,
TESTIMONY OF WAYNE S. DIVINEY
Jan. 10, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[313]Q. Where do you work?
A. National Education Association, Washington, D.C.

[314]Q. How long have you worked there?
A. Approximately five and one-half years.

Q. What is your present job title at the National Education Association?
A. Manager of accounting.

* * * *

Q. Briefly describe your responsibilities in that capacity [315]during the 1981-82 year?
A. I was responsible for the receipt and disbursement of all funds of the association, of generating the financial reports of the association, both to internal management as well as to governance of the association, and a generation of reports to outside agencies

as appropriate, the Internal Revenue Service, Department of Labor, so forth. I also had the responsibility for coordinating the annual audit of the associaton's records.

Q. I am not sure that I made this clear in the record. What was your title during 1981-82?
A. It was manager of accounting.

* * * *

[330]Q. When you testified on direct, Mr. Diviney, you said that each expenditure would be coded by a nine-digit code. Could you explain that in terms of these charts of account?
A. Yes, I can. The last two pages of Exhibit 619 refer to area designations and use a reference to a major account. The major account is listed under there, governance, would be AO1, would be the first three digits of that nine-digit number. That would be for the Representative Assembly. It is a classification process to identify, that is, for the Representative Assembly.

The activity code would be the final three digits of that nine-digit code which would indicate a specific activity relative to the budget that would be applicable to.

The middle three digits are referred to as minor expense account definition which is that natural expense classifications, travel, salaries, so forth.

Q. And under the area designations in plaintiffs' 619, under affiliate services, there are a number of codes which enable you to classify expenditures in the affiliate services department by region. Is that correct?
A. Among other things, yes.

Q. What is the purpose of that?
A. We have people located throughout the country in regional offices. CO1, for instance, as noted on here, is the Pacific [331]States Regional Office, but then 02 is Western States. So forth. We have both an administrative budget from the standpoint of identifying the departmental division lines and so forth

and where people are located, but then within the program aspect of it, from an overlay, tells us what they are doing.

Q. You break it down to place and to function?
A. That is correct.

* * * *

[336]Q. You mentioned in your direct testimony, Mr. Diviney, the phrase "time sheet." Is each NEA employee required to complete a time sheet that indicates daily activities?
A. Yes, they are.

Q. The activities reflected on those time sheets or activity reports are coded by account number in accordance with the chart of accounts. Is that correct?
A. That is correct.

Q. The time itself is allocated by code. Is that correct?
[337]A. Yes, it is.

Q. And those reports are then summarized bi-weekly?
A. Yes.

Q. Are these reports then used for distributing salary accounts in terms of the NEA existing chart of accounts?
A. Yes, they are.

Q. Do NEA employees on occasion work on more than one program?
A. Yes, they do.

Q. So that if an individual works on more than one program the time sheet process involves an allocation of his time by program area, breaks it down into different program areas he is working on. Is that correct?
A. Yes, that is.

Q. Is it true that by such an allocation you are getting a more accurate determination of the full costs of a program?
A. Yes.

* * * *

[341]Q. If the accumulation of costs by bargaining unit were required but only of those employees who provide services to particular bargaining units as opposed to employees who have [342]general functions which might affect many different bargaining units, could coding by bargaining units be difficult?
A. Again that would, that would be difficult within the constraints of the existing system.

Q. It would require the addition of additional codes for the system?
A. A system rewrite.

Q. You would have to add to plaintiffs' 619, for example, to the area designations where we now have it coded by regional office, you would have to add a series of codes for a specific bargaining unit. Is that correct?
A. There are 12,000 bargaining units across the country. I am not sure how that would be even possible from a practical standpoint.

* * * *

[353]Q. Mr. Diviney, I think there was a point when Mr. Lajeunesse was asking you a question dealing with the subject of these 12,000 bargaining units and some effort to allocate, and I noted in part that your answer said that you weren't sure that that was possible from a practical standpoint. Could you explain what some of your reasons or doubts are as to whether that would be a practical possibility, to allocate expenditures of time by NEA employees to one out of 12,000 bargaining units as an example?
A. Well, just anytime that you use the number of 12,000 [354]individual breakdowns, it is a, it becomes immense to try to

deal with. As an example, in our research division, we would have someone that would be analyzing certain information that would be dealing with, ah, some segment of collective bargaining process or some segment of salary schedules, things of that nature that would be relevant information applicable to and used in the bargaining process of each of those 12,000 local associations, local bargaining units.

Are we to say then that while that research staff person was working on that project for two weeks' time that that person's time would have to be distributed in 12,000 different ways? I mean, I think that is the ultimate end of it if we are trying to get that kind of direct relationship between the funds that were expended for a purpose that would be applicable to the universe* that would have to be applied back to that individual bargaining unit. It becomes, it becomes beyond what an accounting system is designed to do, quite frankly, our particular accounting system is designed to do, and, quite frankly, I have never seen one that attempts to do that kind of, of extremely finite breakdown.

I question the validity of the information once it gets down there.

Q. Separate from that burden then, why do you question the validity of it, just focusing on accuracy?
A. There is the local association, a state association, and a [355]national association. We have a unified organization. The local does what it does best. The state does what it does best, and the national does what it does best. All right. And that is the way we try not to have an overlap of services in our operations in the way that we try to do business.

The dues, revenue that comes into the National Education Association, what our membership is paying for is basically outlined in our program budget. They are paying for that, for that lobbyist in Washington to represent them on collective bar-

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(*witness said universe. Did witness mean UniServ?)

gaining issues or things that might affect their contract. They can't send out of their locals someone to Washington to lobby in their behalf. That is the union concept and unification concept that we use.

Should that lobbyist's time in that particular regard go back to maybe 7,000 locals in that particular lobbying effort while he was over on Capitol Hill that day, go back to those 6,000 units that applied to? It becomes one of not having a relevance in terms of whom it applies to but just the concept of we need to have someone out there representing us.

* * * *

[357]Q. Very brief recross, Your Honor. Mr. Diviney, you understand the difference between direct costs and indirect costs, I assume?
A. I have an understanding of that. I would assume it agrees with yours, but I can't be sure.

Q. The lobbyist that you described is lobbying on Capitol Hill on a particular bill which affects individuals all across the country. Would you agree with me that this is an indirect cost?
A. Basically, yes.

[358]Q. And the research person who prepares a data compilation that might be used in any bargaining unit across the country in collective bargaining negotiations, would you agree with me that that person, his services, are indirect costs?
A. Yes.

Q. Would you have the same problem with the accumulation of data by bargaining unit if I said that that coding by bargaining unit would apply only to direct costs, direct services, and not to indirect costs and services?
A. Yeah, I would, I would on a couple of, on a couple of notes. One is that, that again we are talking about 12,000 individual bargaining units. All right. And 12,000 additions to our chart of accounts.

Q. Aside from the addition to the chart --
A. Further, you have direct costs that are related to publications, for instance, all right? And we send out publications. NEA, now there is a document that goes out to a distribution of, I forget the exact number of it, to local leaders throughout the country. Each bargaining unit will get a group of those publications. There is a direct cost of getting those directly mailed to that individual bargaining unit.

Q. Assuming that that is an indirect cost, I agree with you it is -- assume that.

MR. SCHMEDLEN: You are assuming what? It is what?

[359] MR. LAJEUNESSE: That the publication of a newspaper which goes to the entire membership, I don't see any difference between that and a research report which has been used in any bargaining unit or lobbying activities which affect all members. I am saying focus just on people who work out in the field and provide direct services to specific bargaining units. Do you have any problem with those individuals keeping time records coded by bargaining unit?

THE WITNESS: I believe they could note on their time sheets which locals they visited.

* * * *

TRIAL TRANSCRIPT,
TESTIMONY OF WARREN D. CULVER
Jan. 13-14, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[40] MR. SCHMEDLEN: That is -- I will withdraw the question, Your Honor. Let's focus first on whether or not you believe that time sheets could be accurate from the standpoint of allocating time from one bargaining unit as opposed to another bargaining unit.

THE WITNESS: I really don't think that it would be an accurate kind of an assessment. The bargaining, the coordinating council that the UniServ directors work for -- it varies so very much.

In a city like Lansing where I now live, you have a UniServ director who spends essentially 100 percent of his or her time working for the Lansing bargaining unit because it is so large. Whereas, in suburban Ingham County, there will be 15 different bargaining units in the coordinating [41]council that the UniServ director serves. So you don't really tell much what is going on in a bargaining unit just because they spend time in a bargaining unit.

The other problem that I have in that concept is that in our more rural coordinating councils they will, the UniServ director will cover Hillsdale and St. Joseph County, maybe. And they will have 22, 23 bargaining units in their service area. And inasmuch as we try very hard to bargain multiple year contracts, for instance, you will very often spend a great deal of time in one year in a given bargaining unit while you will be spending substantially less time in non-bargaining years in that bargaining unit; and it reflects no purpose to me as to the MEA, and I don't think it accurately reflects the work of the UniServ director, what bargaining unit they were in. So that doesn't really mean very much to me.

* * * *

[59]Q. What is a crisis center used for in the context of these job action reports and in the context of this hard bargaining that you have just described?

A. A crisis center is, if we ever have to have a strike, we have to have a place for work to go on. Our UniServ offices generally aren't located in every one of our bargaining unit areas, or they are not large enough to hold a meeting of the bargaining unit members. And if we have a job action, we are not going to be able to use school facilities.

So we prepare a work meeting site in advance, and it does a couple of three things. If you have to have a job action, obviously, it fulfills the purpose for which it was created and named. On the other hand, it demonstrates to the community and to the employer that we are serious. We have had a job action investigation. We have gone and talked to the superintendent about our concerns, as a state organization, what is happening in our local.

We probably engage in some informational picketing. And one of the other things that we will do is set up a loan system with the local credit union. There are a whole lot of pieces with this job action investigation. And the crisis center is one of them. And more often than not as I indicated, probably, six out of seven times or seven [60]out of eight times we never have to use the facility. We will simply secure it and pay a couple of weeks rent, and thankfully never have to use it because it has served its purpose, helping to build the pressure and get to the situation, get the situation resolved.

* * * *

[66]Q. One of the assigned responsibilities of the UniServ director, Mr. Culver, was to act as secretary-treasurer to the coordinating council political action committee. Is that correct?
A. Yes, that is true.

Q. When did collective bargaining for public employees begin in Michigan, Mr. Culver?
A. In 1965.

Q. Did the Michigan Education Association exist before then?
A. Yes, it did.

Q. What were its services before collective bargaining was authorized in Michigan?

MR. SCHMEDLEN: Objection, relevance.

MR. LAJEUNESSE: I think it goes to the question of relatedness.

THE COURT: It might. The objection is overruled.

THE WITNESS: Before 1965, the MEA had served as an organization only for teachers, and it provided professional, instructional help for teachers. Strangely enough, it had the collective bargaining system, and we started bargaining some contracts in some school districts before the statute was passed in the state. Provided [67]retirement, tenure.

Q. The MEA on occasion lobbied before the collective bargaining law was passed?
A. Yes, it had a lobbyist before that time.

Q. Did it engage in public relations before the collective bargaining law was passed?
A. Yes, it did.

Q. Did it engage in organizing activities before the collective bargaining law was passed? Membership recruitment?

MR. SCHMEDLEN: Objection, Your Honor. When he says organizing, it doesn't make sense. We are talking about organizing, in the way that I think that term is used in this area, we are talking about organizing people to be in collective bargaining units, and I don't, just don't see how that can make sense before you have a law that permits collective bargaining.

MR. LAJEUNESSE: I amended my question, Your Honor, to specify members --

THE COURT: Yes, membership recruitment.

THE WITNESS: Yes, we did engage in membership recruitment.

BY MR. LAJEUNESSE:
Q. Did you engage in millage elections before the collective bargaining law was passed?
A. Yes, we did.

[68]Q. I believe I asked you about lobbying?
A. Yes, you asked about it.

Q. Was Kai Ericson (ph.) your predecessor as associate executive secretary or director of the Public Affairs Department?
A. Yes, he was.

MR. LAJEUNESSE: I am handing the witness what is marked for identification as plaintiff's Exhibit No. 529. It has been stipulated in the pretrial order, Your Honor, that this exhibit is authentic and a business record of the MEA.
Would you identify the document, Mr. Culver?

THE WITNESS: It is a letter from Kai Ericson to Morris Andrews (ph.), dated January 4th, 1975, and entitled "Organization of Services, UniServ."

BY MR. LAJEUNESSE:
Q. And this is Kai Ericson whom you testified was your predecessor?
A. Yes.

Q. As head of Public Affairs for the MEA?
A. Yes.

Q. And attached to this memorandum is a summary dealing with the nature of the UniServ program. Is that correct?
A. I am sorry? What did you call the attachment? I am sorry?

[69]Q. It is headed to be association services to members.
A. Oh, okay. That is attached.

Q. And goes on to discuss the UniServ program. Is that correct?
A. Yes.

MR. LAJEUNESSE: I move the admission of the exhibit, Your Honor.

MR. SCHMEDLEN: Objection, relevance. Among other reasons, this document is only seven years prior to the year in question. And because of that, I don't see that it helps us in light of the parties' stipulation of what we are interested in this case is the 1981-82 school year. I don't think that this document given its date can be relevant for purposes of that particular year.

THE COURT: Mr. LaJeunesse, why would it be relevant?

MR. LAJEUNESSE: Your Honor, I believe this document shows the relationship between collective bargaining and other MEA activities which are in issue here, and it shows that relationship was not and is not as on direct as the MEA claims. This is an MEA employee in a managerial position giving his opinion on the same issue testified to by the witness, and I would mention a significant interest on that issue.

It also shows the nature of the services [70]for which UniServ directors are responsible and rebuts the witness' testimony as to the de minimis scope of the non-bargaining responsibilities of the UniServ director.

THE COURT: Although it is highly problematical, the Court will admit Exhibit 529 for whatever it is worth.

* * * *

[86]Q. Mr. Culver, do you believe that all MEA activities are really related to collective bargaining?
A. Do I personally believe that?

Q. Yes.

A. Yes, I do.

* * * *

[107]Q. Mr. Culver, I am handing you what has been marked as plaintiff's Exhibit No. 73 for identification and ask you to examine that document, and then turn to the page which I have opened it to. Could you tell us what the document is in its entirety, please?
A. It appears to be an agenda for the fall Representative Assembly in November of 1982.

Q. And if you will turn to, actually not the specific page, but the section that begins section "F"?
A. I have that.

Q. Could you describe what that is?
A. Section "F" is a report by the association of progress achieved on its goals and objectives.

Q. And what does that report include within it?
A. Provide bargaining representation, protect legal rights --

[108]Q. No, I don't mean the specific items. What is the general purpose of the report? What does it tell to the Representative Assembly?
A. The type of progress we made in the past year.

Q. On what?
A. On goals, our association goals.

MR. LAJEUNESSE: Well, Your Honor, I obviously have no desire to introduce the entirety of plaintiff's No. 73, but I would like to move the admission of just Section "F" which is the report card on the goals and objectives of the Michigan Education Association for the year 1981-82. It is nine pages long.

THE COURT: I haven't been able to find it. So I guess I better find it if there is going to be an objection.

THE WITNESS: On F-2.

THE COURT: I see it.

MR. LAJEUNESSE: It starts on --

THE COURT: Yes, I see it.

MR. LAJEUNESSE: "F" and then F-1.

THE COURT: I see it. Mr. Schmedlen.

MR. SCHMEDLEN: To save time, Your Honor, I won't object. The document does not allocate time, but conceivably the Court could find it of some relevance.

THE COURT: The Court will receive pages F-2 through F-9 of the Exhibit 73.

[109] MR. LAJEUNESSE: Your Honor, I think I in moving its admission referred to both the cover, F-1 through F-9. The only reason that I suggest that is there are some explanatory remarks on F-1.

THE COURT: I will receive the cover on F-1, through F-9.

* * * *

[142]Q. I hand the witness what is marked as plaintiff's Exhibit No. 164 for identification. In the pretrial order this document was stipulated as to authenticity, and the fact that it was a business record with the NEA. I ask you to identify this document.
A. It looks like one of the working drafts set up for what the time schedule would be for the Preserve Public Education program, implementation.

Q. And the date on the job request, which is the first page of the exhibit, is February 15, 1982. Is that correct?
A. That is correct.

Q. And the PPE program had been adopted by the board of directors prior to that date. Is that correct?
A. That is true.

Q. To return to the substance of the exhibit, the first part is the working draft, number five, activities scheduled, and time lines for PPE. Is that correct?
A. Yes, that is what it says.

Q. It describes various activities, who is responsible for them, has responsibility for them, and the date on which they were expected to be implemented. Is that correct?
A. Yes.

Q. And the second portion following that time line lists the [143]responsibilities of the different MEA departments for implementation of PPE by department. Is that correct?
A. I believe so. I haven't got past Government Affairs. Yes, it does.

Q. And if you turn to the last page, the last page --

MR. SCHMEDLEN: The last page of the draft or the last page of the whole exhibit?

MR. LAJEUNESSE: The last page of the whole exhibit. That page lists UniServ responsibility for PPE. Is that correct?

THE WITNESS: Yes, it does.

MR. LAJEUNESSE: Your Honor, I move the admission of plaintiff's 164.

MR. SCHMEDLEN: Your Honor, in the possible interest of saving time, rather than reading the document now, and then to state the nature of the objection, I make no objection although I think the document is of little if any relevance.

THE COURT: I can't tell. I will receive it. No. 164 is received.

BY MR. LAJEUNESSE:
Q. Mr. Culver, plaintiff's 164, although it may be headed working draft, in fact was the outline of the PPE program adopted by the MEA board of directors in 1981-82. Is that correct?
A. I believe, I believe that it summarizes the implementation [144]of that program, yes.

* * * *

[174]Q. I am handing the witness what has been marked for identification as plaintiff's 168. The authenticity and the fact that this is a business record have been stipulated in the pretrial order. I ask you to identify this document.
A. This is a memo to MEA board of directors, local association presidents, and UniServ directors, from the Membership [175]Services department, dated February 19, 1982, and entitled, "Preserve Public Education" dash "Posters and Ads."

Q. And the memo reflects that this document was sent to UniServ directors. Is that correct?
A. They are addressed, yes.

Q. And attached to the memo are a number of different posters that were used in the Preserve Public Education program in 1981-82?
A. Yes.

Q. And if you will look at the first poster, one that says, quote, practically every decision affecting education is a political decision, unquote, and the larger poster that for purposes of

reproduction had to be broken up into two pages, which has a quote from President Kennedy, says, quote, preserve public education by becoming active in the political process, unquote -- oh, good. Your copy was not broken up?
A. No, but it is also stapled together. So I can't read it. Do you mind if I pull the staple?

Q. Sure. Do both of those posters, Mr. Culver, show that or ask that a person who wants more information with regard to Preserve Public Education program contact your local association president or UniServ directors?
A. Yes, it does.

MR. SCHMEDLEN: Your Honor, I will stipulate to the admission of the document to save time. What we are doing is [176]we are reading it, and then having it offered, and I think--

MR. LAJEUNESSE: I was trying to establish the relevance. I expected an objection.

MR. SCHMEDLEN: I will stipulate to its admission. I think it does describe the Preserve Public Education program. Even though it is cumulative, it might save time to simply admit it.

THE COURT: If you want to offer it. 168?

MR. LAJEUNESSE: Please, Your Honor.

THE COURT: All right. Proceed.

* * * *

[179]Q. Mr. Culver, are there issues in bargaining in higher education units which are different from bargaining in "K" through 12 units?
A. Yes, sir. I think different bargaining units have unique issues.

Q. Depending upon the type of employees involved?
A. Well, there can be some. There are many common issues, and there are some unique issues.

Q. Are there issues in bargaining in higher education units which are different than bargaining in support personnel?
A. Along with common issues, yes, there are some unique issues.

Q. Is it common for bargaining in a teacher unit to set a pattern for a higher education unit?
A. Well, I think it is common or more common with the community colleges than it is with the four-year institutions.

Q. Can you get -- you say it is more common. Can you give us a specific example from 1981-82 of a contract provision being bargained in a "K" through 12 unit that set a pattern for a higher education unit?
A. A specific contract, no.

Q. Specific contract provision. You don't have to tell me which unit it was. One that was bargained in 1981-82?
[180]A. No, I can't.

Q. Can you give us an example of a contract provision bargained in a support personnel unit which set a pattern for a higher education unit?
A. I think there is bargaining in the K-12's and in the support units that do give patterns for the higher education units, particularly seeing that the higher ed units came into -- much later than the K-12 units. There is not necessarily one in any one given year, but the argument we are having today on agency shop is a pattern kind of thing. The dues reduction, the fact that we have the right to bargain over issues of curriculum, or how we feel with fringe benefits, and whether or not retirement supplements are legal to public employees in the state of Michigan, those are all bargaining, K-12 units, and had tremendous impact on the higher ed units, including the four-year colleges. The fact that we -- I don't want to use the same -- plowed the ground in

the K-12 school district is very, very important I think for the bargaining of higher education units.

MR. LAJEUNESSE: Your Honor, the answer was non-responsive to my question. The question was directed to the support personnel units, to give specific examples of how the support personnel unit bargaining set a pattern for higher education.

[181]THE COURT: You may be right. It was responsive to an earlier question, and the answer was helpful to me. You are probably right. So you may ask the question about the support unit again.

THE WITNESS: I am sorry. I am not aware of any, ah, right off the top of my head that have been particularly beneficial in higher ed faculty units. Higher ed support units, yes, definitely.

* * * *

[182]Q. I believe I will restate for the record the question. Is any of the time at the Michigan Education Association Representative Assembly devoted to matters which are considered not chargeable by the MEA?
A. Generally speaking, a Representative Assembly will discuss during an issues portion of their deliberation issues that any delegate wants to bring before the assembly. And from time to time there will be issues that, I think that might be considered non-chargeable, such as there might be some debate on right-to-life issues or gun control.

Q. Mr. Culver, I hand you what has been marked for identification as plaintiff's Exhibit No. 70, and ask you to identify this document. It has been stipulated in the pre-trial order that it is authentic and a business record of the MEA.
A. This is a copy, apparently, of the keynote address at the fall, 1981 MEA Representative Assembly, given by Dr. Richard C. Devor (ph.), and entitled "The Myths of the Arms Race."

* * * *

[189]Q. Mr. Culver, I hand you what has been marked for identification as plaintiff's 158. Again the authenticity has been stipulated and the fact that it is a business record. This is a copy of the minutes of pre-NEA R.A. coordinating committee meeting, held in March, 1982. That would have been a meeting [190]held in preparation for going to the National Education Association Representative Assembly that occurred during the 1981-82 year. Is that correct?
A. Oh, yes, it is a meeting where our, where our members get together with the region coordinators, the officers, and the MEA board of directors, to get ready to go to the National convention.

Q. At that meeting, one of the items of business as reflected in appendix "D" was to adopt the MEA priorities for the delegation at the national convention, correct?
A. I haven't gotten that far yet.

Q. That is what it says on appendix "D." The goals of MEA delegation are trying to adopt the goals of MEA at the Representative Assembly.

MR. LAJEUNESSE: Your Honor, I move the admission of plaintiff's 158.

MR. SCHMEDLEN: Your Honor, objection, relevance, and it is also cumulative. Several minutes ago when we started on this charade, the witness testified to exactly that effect.

THE COURT: Didn't the witness already testify, Mr. LaJeunesse, that the major purpose of the MEA attending the NEA delegate representative assembly was to promote the goals of the MEA, which is all that the exhibit says?

MR. LAJEUNESSE: No, Your Honor, I believe the [191]exhibit gives what the specific goals were. For example, number one, "make the passage of a national collective bargaining bill."

THE COURT: Do you want to put in appendix "D" then? Do you want me to read --

MR. LAJEUNESSE: That is fine.

THE COURT: Will the other 14 pages help at all?

MR. LAJEUNESSE: No, Your Honor. I would --

THE COURT: The Court will receive 158 as to appendix "D" although I believe it to be possibly cumulative. I will receive it. The remainder of Exhibit No. 158 I reject.

* * * *

[199]Q. I hand you what is marked for identification as plaintiff's Exhibit No. 21. Again it is stipulated in the pretrial order that there is no objection to the admission of the document. Plaintiff's 21 is the minutes of a board meeting of the Ferris Faculty Association. * * *

* * * *

[200] [MR. LAJEUNESSE:] * * * I will move the admission of plaintiff's Exhibit No. 21.

* * * *

[201] THE COURT: I will receive Exhibit No. 21. I don't need the speech on it. I notice that it is unapproved minutes, but I will receive it just the same. As opposed to approved.

MR. LAJEUNESSE: Your Honor, it was stipulated that it was a business record. These are the only minutes that were produced by the defendant local.

THE COURT: All right.

MR. LAJEUNESSE: They were represented to us as the official minutes.

BY MR. LAJEUNESSE:
Q. I hope we can do this very quickly. I am handing to the witness what has been marked for identification as plaintiff's Exhibit No. 55 and also 57. Again, 55 is a. both of these have been stipulated in the pretrial order. There is no objection to their admission. Plaintiff's 55 is a letter [202]from Mark Jenkins. Mr. Jenkins served as one of the temporary UniServ directors for unit 13, 1981-1982. Is that correct, Mr. Culver?
A. Yes, he did.

Q. That is a letter from him to Art Rice. Who is Art Rice, Mr. Culver? R-i-c-e.
A. One, number 55 is a letter from Mark Jenkins to Art Rice, who was higher educatio[illegible]ant.

Q. For the M[illegible]gan Education Association?
A. For the [illegible]

MR. LAJEUNESSE: Again, this discusses the functions of the coordinating council, Your Honor, and referring to plaintiff's 55, and mentions political activity and Preserve Public Education program. Again it shows the implementations of these programs at the local level. It involves the unit in question in this case, and I move the admission of plaintiff's 55.

* * * *

[203] THE COURT: I think it is easier for me to receive it and read it later on, and decide if it is or not. I will certainly conditionally receive 55.

* * * *

[204]Q. Mr. Culver, I hand you what is marked plaintiff's Exhibit No. 39 for identification, stated in the pretrial [205]order that there was no objection to the admission of this document.

Plaintiff's 39 is five mailgrams to members of the Michigan State Senate and the House of Representatives from the Ferris State College Faculty Association, the name of the organization, and the address of the Michigan Education Association, 130 Maple Street, Big Rapids, Michigan.

Would you stipulate that that is the UniServ director's office?

MR. SCHMEDLEN: Yes.

BY MR. LAJEUNESSE:
Q. Would the cost of this type of communication have been paid for out of the UniServ director's funds?
A. Either that or PAC administration on the local coordinating council.

Q. Mr. Culver, I am handing you what is marked as plaintiff's Exhibit No. 56 and plaintiff's No. 38. Again in the pretrial order, it stipulates that there is no objection by defendants for admission of either of these documents. Plaintiff's 56, that is a letter from Mr. Jenkins, the UniServ director for unit 13-E, to Dick Ringstrom (ph.), the zone director, supervising him, correct, Mr. Culver?
A. Yes, that is correct.

* * * *

[206] [MR LAJEUNESSE:] * * * * I move the admission of plaintiff's 56 and 38.

* * * *

[208] THE COURT: The Court will receive 56 and reject 38. No. 38 doesn't seem to help the case at all.

BY MR. LAJEUNESSE:
Q. Mr. Culver, what is the MEDNA that you are presently employed by?
A. Michigan Education Data Network Association.

Q. And what does it do?

MR. SCHMEDLEN: Objection, Your Honor, absent some showing of relevance, I don't think it even existed in 1981-82.

MR. LAJEUNESSE: I will ask another question. Is all of its business with MEA and its associated organizations?

MR. SCHMEDLEN: Same objection, Your Honor. The time frame doesn't sync with this case.

THE COURT: The objection is sustained.

MR. LAJEUNESSE: If I may explain the purpose of the questions, they go to the bias of the witness.

THE COURT: If they go to the bias of the witness, I will reverse myself, and you can answer the questions.

BY MR. LAJEUNESSE:
[209]Q. The question was, Mr. Culver, is all of MEDNA's business with MEA and its associated organizations?
A. Our business is with the MEA, MEASSA, MEDNA itself, and MEALS, which is a Michigan Education Legal Service Insurance--

THE COURT: You guys have more acronyms than the federal government does.

THE WITNESS: That is probably correct. And we provide services to those organizations, and we provide services to MEA PAC, which is one of our affiliated --

MR. LAJEUNESSE: Your answer to my question is all of its business is with the MEA and associated organizations, yes?

THE WITNESS: To the best of my knowledge, yes.

BY MR. LAJEUNESSE:
Q. If the MEA's revenues were to decrease, would MEDNA's business be affected adversely?
A. I really don't know the answer to that. I suppose if the MEA went out of business the answer would be yes.

* * * *

[226]Q. I believe you testified on direct that you received the job action investigation reports?
A. Generally, that is true.

MR. LAJEUNESSE: Your Honor, I hand the witness what is identified for purposes of identification as plaintiff's 29. The pretrial order stipulates that plaintiff's [227]29 is admissible without objection. I intended, Your Honor, to introduce this originally through Diane Malmo (ph.).

MR. SCHMEDLEN: No objection to the document being admitted, Your Honor, if that will save time.

THE COURT: Exhibit No. 29 is received.

MR. LAJEUNESSE: And that is the job action investigation report for the Ferris Faculty Association in the negotiations in the fall of 1981. Is that correct?

THE WITNESS: Yes.

* * * *

TRIAL TRANSCRIPT, VOL. II,
TESTIMONY OF STEVEN H. HANKE
Jan. 14, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[360]Q. What is your occupation?
A. I am a professor o[f] Applied Economics.

Q. Where are you employed?
A. Johns Hopkins University in Baltimore, Maryland.

Q. Are you tenured?
A. Yes, I am.

Q. How long have you been employed at Johns Hopkins?
A. Since 1969.

Q. Mr. Hanke, I am handing you what is marked for identification as plaintiffs' Exhibit No. 604. To expedite the time, plaintiffs' 604 is Mr. Hanke's resume. Rather than trying to have him orally give us his very lengthy background, I think it is simpler to put in his resume in evidence and only hit the highlights.

THE COURT: I agree. Exhibit No. 604 is received. I am sure there is no objection.

BY MR. LAJEUNESSE:
Q. You have the resume in front of you, Mr. Hanke?
A. Yes, I do.

Q. The first page states that you received your Bachelor of Science at the University of Colorado in 1964. In what subject did you receive that degree?
[361]A. That was in Business Economics.

Q. And your Ph.D. was received in 1969 also from the University of Colorado. In what subject did you receive that degree?
A. That was Economics.

Q. Your professional experience in addition to the academic appointments listed on page one lists a number of public sector appointments on page two, the first being that you are a member of the Governor's Council of Economic Advisors in Maryland. By whom were you appointed to that position?
A. Governor Marvin Mandel.

* * * *

Q. The second lists you as a senior economist on the President's Economic Advisors. That would be President Reagan?
A. That is correct. Is the appointment --

Q. Were you appointed by President Reagan? I am sorry.
A. Yes.

Q. And the third item lists you as, as presently -- I presume that continues until this present day -- a member of the Joint Economic Committee for the United States Congress. Is that correct?
[362]A. That is correct.

Q. I should say senior economic advisor. You are not a member of Congress. That is a bipartisan committee?
A. That is correct.

Q. By whom were you appointed as senior economic advisor to the Joint Economic Committee?
A. Originally Senator Jepson, and most recently Congressman Obie (ph.sps.).

Q. Have you ever received any more recent public sector appointments not listed on plaintiffs' 604?
A. Yes, I have been recently appointed to the President's Task Force on Economic Justice.

Q. Pages two and three list a number of research appointments. Have you received any research or professional appointments not listed on plaintiffs' 604?

A. A research appointment as a senior fellow at Ludwig Von Mises Institute in Washington, D. C.

Q. Can you give us some idea of the nature of your work in the research appointments?
A. Yes. The first three, the appointment in France, Austria and Sweden, '78 through '81, were all primarily dealing with the analysis of costs for nationalized or public sector entities. From the '83 appointment, the Heritage Foundation as well as the, '84 through '85, Manhattan Institute, and the Ludwig Von Mises Institute very, I have been primarily [363]doing research on the effects of property rights institutions, on the costs associated with providing public and private sector goods and services.

Q. And could you just briefly describe what your responsibilities were in your public sector employment that we went through earlier?
A. The Governor's Council on Economic Advisors, the responsibility there was developing and directing the Governor's staff on a forecasting model that forecasted tax revenues for the state on a quarterly basis. The President's Council on Economic Advisors had a very varied portfolio all the way from Japanese trade to an analysis of the cost structure of the public power systems in the Southwest, the whole host of issues associated with public lands, foreign currency markets -- basically anything that they needed someone to look at quickly and get staff on it I dealt with those things. So it was really quite a broad spectrum.

Most anything in the Applied Economics area fell on the desk at sometime or another I would say during that period of time. The Joint Economic Committee really the same would apply, very broad responsibilities.

Q. And the Presidential Task Force on Economic Justice?
A. Well, the Presidential Task Force is very narrowly focused because it was formed, it was an amendment to the [364]Foreign Aid bill alleged here that mandated that this be formed, and the primary focus of it is to look at what are called ESOP's, employee stock ownership plans, as a mechanism for promoting American

foreign policy in Central America and the Caribbean Basin. So that one is very narrowly focused.

Q. Are all of the various appointments listed on the plaintiffs' 604 academic in nature or some concerned with practical applications of economics?
A. Well, some of the ones actually I just gave you I would consider practical applications in the public policy arena. However, I have and still do have private sector affiliations. For several years I was a chief economic advisor to Binion and Son (ph.) in London, and the work there was all costing work related to public sector, in most cases regional water authorities, what their cost structure was, what rates they should be charging for water producing.

Most recently, something that isn't listed on this exhibit -- I have 604 -- I have been recently named as Chief Economist for Friedberg Mercantile (ph.) -- excuse me -- not Friedberg Mercantile Group. Friedberg Commodity Management Corporation (ph.). We have two separate units. They are corporate entities. And also, the director, something called World Advisory Services which is a division of Friedberg Commodity Management, Inc. And both of those are located in Toronto. Their primary focus there is analysis of [365]currency markets, that is, our primary trading activities, and some other commodities, the primary one being crude oil.

Q. Have you specialized in any particular aspects of economics during your career?
A. Generically I would say that Applied Economics as my title implies would kind of cover everything. However, my career has kind of two segments there. One is what I call the public sector analysis, and in that regard I have done a considerable amount of work on cost analysis and investment feasibility for public sector entities, nationalized industries all the way down to local public services like water supply, and garbage collection, and that sort of thing.

The other side would be the private sector applications, and as I indicated that has been primarily in currencies and commodi-

ties analysis, the analysis of currency and commodities markets, and to some extent investment feasibility also.

Q. Have you published any subjects -- I am sorry -- any works on the subjects of economic costs analysis, regulatory service fees?
A. Yes, I have.

Q. And those would be listed in plaintiffs' 604?
A. Yes, those are listed through 1983 on the exhibit I have. Page 13 is the last page, and 83 is the last year of publications.

* * * *

[366]Q. Have you testified before as an expert witness?
A. Yes, I have.

Q. What are the types of cases in which you have testified as an expert?
A. One class of cases would be public utility rate cases before public service commissions. Another type would be valuation cases, and in most cases those are either tort or contract disputes of some sort.
[367]And then that would be it. I have testified before Congress, but not as a --

Q. Did you apply labor economics in any of the cases that you have testified as an expert witness?
A. Well, most of the tort cases are actually personal injury cases, and you have to get into the labor economics and the analysis of labor markets to determine what the wages and salaries and benefits would have been with and without the tort. So that, yes.

Q. Did you testify for any particular side on those types of cases? Are you a plaintiff's witness or a defendant's witness?

* * * *

THE WITNESS: I roughly split it 50-50, although in one particular short period of time, for example, a year it might have been 75 defense. But over the long pull about half and half.

BY MR. LAJEUNESSE:
Q. Have you ever prior to this case been paid by the National Right to Work Legal Defense Foundation for any work?
A. No.

[368]Q. Have you ever been paid by the National Right to Work Committee?
A. No.

Q. Have you read the decision of the United States Supreme Court in Abood v. Detroit Board of Education?
A. Yes.

Q. Have you read the decision of the Supreme Court in Ellis v. Railway Clerks?
A. Yes.

Q. Have you read the pretrial order setting forth the issues in this case?
A. Yes.

Q. You understand what I am talking about when I talk about the line drawing issue in this case?
A. Yes, I do.

* * * *

[378] THE COURT: The record I think contains sufficiently the issue before the Court. During the recess I looked at the case cited to me by the defendants, United States v. Marabellas, M-a-r-a-b-e-l-l-a-s -- that is a Ninth Circuit decision in 1984, I think cited correctly at 724 F.2d 1374.

I also reread several times the proposed finding of fact 44 on page 28 of the plaintiffs' findings of fact and conclusions of law,

and thought some about the testimony I have already heard in the trial, [379]particularly Mr. Culver. It is my conclusion that the objection to the testimony should be overruled.

The objection has some merit. It seems to me that the objection goes to the weight I should give the testimony of Mr. Hanke and not to, and not to the testimony that he is about to give -- realizing that it is within my discretion to make that determination unless I make a clear error in making the determination. It is clear that Mr. Hanke's background -- in the first place, it is obviously clear that Mr. Hanke is clearly qualified as an expert witness in matters economic, particularly in Applied Economics. His vita speaks for itself, and there is no question about that.

The narrow issue is with regard to the existing state of the law in labor relations, and both in Michigan and in the United States, and more particularly in the United States -- and given the witness' admitted lack of knowledge about the so-called collectivity that is inherent in union work, and, possibly, the MERC decision in Michigan, whether he should be allowed to testify, and given the fact that his calculation of shared and joint costs in the past has largely had to do with regulatory agencies and not with the issue before the Court; and the Court understands that. I think that probably in large part is what the objection was all about in the first place.

[380] But I am convinced that he should be permitted to testify as an expert. I have to decide ultimately, particularly with regard to the key decisions and the MERC case that has been cited to me by everybody.

* * * *

[382][THE COURT:] Of what weight and need to put on his testimony with regard to the testimony Mr. Culver and others have already given, I think I am capable of doing that. The objection, therefore, is, the objection to his continued testimony on economic matters is overruled.

* * * *

[384]Q. Mr. Hanke, do you know what an agency shop service fee is?

A. Yes.

Q. Could you describe it?

A. Well, there are costs that are so-called chargeable, and others non-chargeable, and the agency shop is based on those costs that are chargeable.

Q. Is the problem of the methodology of separating chargeable from non-chargeable costs similar to any other problems with which you have experience?

A. They are very similar to all of the situations of public utility regulation and public utility rate-making, and also user fee computations for the delivery of, pricing of the delivery of public services. However, there is one difference between the user fee calculation and the public utility rate calculation vis-a-vis the union situation and the agency fee, and that is that with public utility rates or user calculations the customer is in a voluntary, has a voluntary relationship with the public entity that is providing the service.

In other words, if a public utility company [385]charges so much per kilowatt-hour, you can decide whether you want to turn the power on or not and just walk away from the service being offered. That isn't an option in the agency fee situation, and that leads to a fundamental economic analytical problem, and that is, with the agency fee situation you have no direct or indirect method by which you can evaluate benefits being received by the individual who is paying, who is being forced to pay the agency fee, whatever it may be.

Whereas, with a public utility or a user fee situation, a customer since he can walk away, and it is a voluntary relationship, there are methods for calculating benefits received by the user of that public service. And that is a very major distinction in my view between the agency fee versus the public utility. Everything else would be the same with the exception of the coercive versus voluntary components.

Q. Does that difference affect the economic analysis of the methodology in determining the fee?
A. I don't think that it should affect the overall methodology in costing and computing the fee. However, I think that it means that the degree of care with which one does a computation in the union situation should even be greater than in a public utility situation because ultimately in the public utility situation the customer doesn't have to turn the switch [386]on, basically, and since you do have to turn the switch on, so to speak, in the union situation the computation of costs should be done with extreme care and caution.

Q. You have explained in some detail the differences between or the difference between calculating a service fee and user fee or regulatory fee, but you didn't really say how they are the same. Could you explain that?
A. They are the same in the sense that what a public utility rate is attempting to do is simulate what would happen in a competitive market environment. So you are trying to compute the costs that the individual customer would impose by taking whatever the action is to consume that he is taking; in other words, you want to get a direct causal link between the customer and the impact that he is having on the utility and charge him for that. And that is what would happen in a market situation.

So you are attempting to simulate the market when you don't have one in a publicly owned utility situation. Now that to me is precisely what you are attempting to do with the agency fee situation. You are trying to compute the cost imposed on the collective bargaining unit by the nonmembers and charge them for that. And the reason that you want to do it is not only to, as I mentioned, simulate the market, but you want to put the union members and the non-union members in a situation where neither group is subsidizing the other [387]group.

Q. What is your experience as to how the utility rates are calculated, user fees?
A. There is a wide variation on these. In what I would call the more progressive states the computation is based on direct causal

linkage between use and costs. The so-called marginal cost approach to rate-making.

And what I mean by progressive states, you find this is in Wisconsin, California, New York, Illinois. Ah, some states like New Mexico aren't necessarily known as progressive states, but having commissioners that are individually, shall be say, are enlightened and trying to get this direct causal linkage. So, like, New Mexico would require these marginal cost analyses also.

And then the other kinds of generic group, there are in fact many states that, in which rate-making is what I would determine highly politicized, and there is not the necessary economic causal link between use and cost and rates based on cost.

* * * *

Q. You say highly political. What is the process by which the rates are determined in those states?
[388]A. Well, in all states there is a rate commission, a public utility rate commission that will hear the case. And all I am saying is that in the progressive states marginal costs analysis with its direct linkage and cost-based pricing is in fact required. The commissioner must receive for a case to go forward a cost-based analysis which has this direct linkage in it.

In other states, you may or may not. I mean, it just depends. It is a varying thing, and to some extent one reason that this happens, it is staffing also. I would characterize the staffs in the progressive states as being highly trained professionals relative to the other states.

Q. Is there economic literature supporting a methodology utilized in the so-called professional -- (interruption)

MR. SCHMEDLEN: Objection, hearsay.

THE COURT: Sustained.

MR. LAJEUNESSE: I believe that the expert may state hearsay as the basis of his testimony.

THE COURT: Yes, you are right. If that is the basis of your testimony, I am wrong about sustaining.

MR SCHMEDLEN: I will withdraw the objection if that is the basis of the testimony.

THE WITNESS: There is indeed a large professional literature on cost-based pricing.

[389] THE COURT: And that is in part what you base your opinion on?

THE WITNESS: Yes, it is.

BY MR. LAJEUNESSE:
Q. Have you reviewed defendants' Exhibit No. G and defendants' Exhibit No. K, which are tabbed in that book of defendants' exhibits in front of you, prior to testifying today?
A. Exhibit G, yes.

Q. "G" is the Michigan Education Association reduced fee calculation?
A. "G," the answer is yes.

Q. And "K" is the National Education Rebate --

MR. SCHMEDLEN: Your Honor, I will stipulate that we use the average cost system as the Court heard through the witnesses if that will save time.

THE COURT: It may save time. He hasn't got it down to indicate whether he has looked at "K."

THE WITNESS: I have looked at it.

BY MR. LAJEUNESSE:
Q. How would you describe the methodology used? Well, first of all, let me ask the first question. Is the methodology used in those two exhibits the same in your opinion as an economist?

A. Yes.

[390]Q. How would you describe in your opinion as an economist the methodology utilized in those two calculations?
A. The methodology would be the residual costing and the residual pricing method.

Q. What do you mean by that?
A. What I mean, a total cost was given, and then the non-chargeable items were identified and subtracted from that total, and it was assumed that the residual was in fact all chargeable, and the fee based then on the average of that.

Q. In your professional opinion as an economist, does that method of calculating the fee have any basis in economic theory or practice?
A. No, it does not have any basis in economic theory or in practice either in the private sector or public sector.

Q. And what methods are used in the private sector that this does not utilize?
A. Well, in both the private -- obviously in the private and also in the public, when user fees or public utility rates are charged, it is not a residual method that is used but, rather, a direct method in which you are attempting to figure out what the cost is imposed by the user so that you can set the price at that cost. And, and that is the approach that is used.

In other words, and in the private sector it obviously is. You don't use a residual approach. If you [391]go to a gas station to buy a tire, he looks in his book of what the cost of the tire was, and he has his markup, and he charges you. He doesn't figure out the total cost of his gas station, add up all of the revenues that he gets from tires, and then figures out how much he is going to charge you for a tire.

Q. Is the direct cost method more rational from an economic standpoint?
A. It is not only more rational, but it is the only method that is used in economic analysis.

Q. Why?
A. Because economic analysis of markets by definition has to use that approach because that is what people in the markets do. They directly see what the costs imposed are and set their pricing policies based on those causal linkages. In the public sector when pricing is used, and I say when pricing is used because in many cases there aren't fees or user fees, but when there are fees or prices charged, there is an attempt to figure out what the linkage is between the user, the costs that he imposes, and then the price that will be charged to that user for imposing those costs on the public system.

Q. In your professional opinion, is the direct pricing or direct costing method more likely to avoid the risk in the service fee situation that nonmembers might be subsidizing [392]non-chargeable costs?
A. Absolutely.

Q. Assume, Mr. Hanke, that the justification for the service fee is to ensure that nonmembers pay their fair share of the costs of the statutory functions of a union as their exclusive representative. Then also assume that that requirement which I have just described is economically rational. Do you understand the assumptions?
A. Yes.

Q. Given those two assumptions, in your opinion as an economist is the following standard consistent with economic theory and practice? Quote: "Employees such as petitioners object to being burdened with particular union expenditures. The test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employers on labor management issues. Under this standard objecting employees may be compelled to pay their fair share of not only the direct cost of negotiating and administrating collective contract(s) and settling grievances and disputes, but also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the

union as exclusive representative of the employees in the bargaining unit." End quote.
[393] I understand that is a long question. Do you understand the question, Mr. Hanke?
A. I understood the quote, but what was the question again?

Q. Given the two assumptions, given the two assumptions that the justification for the service fee is ensuring that the nonmembers pay their fair share of the costs, of the statutory costs of the unions as their exclusive representative, and the second assumption that that justification is economically rational, does this quote that was just read, is this quote that I have just read consistent with economic theory and practice?

* * * *

[394] [THE COURT:] You may answer the question if you now can remember it after all that.

THE WITNESS: The answer is yes.

THE COURT: I also predicted your answer.

BY MR. LAJEUNESSE:
Q. Still operating under our two stated assumptions, that is, the justification for the service fee requiring the nonmember to pay his fair share of the statutory functions, exclusive representation, and the assumption that that is an economically rational justification, operating under those two assumptions, in your opinion as an economist, is it consistent with economic theory and practice to charge nonmembers for the costs of chargeable activities performed on behalf of other bargaining units?

MR. SCHMEDLEN: Same objection, Your Honor. I am sure you will rule the same way.

THE COURT: I will take the answer. That is, you may answer.

THE WITNESS: No.

BY MR. LAJEUNESSE:
[395]Q. Why not?
A. Precisely because you have the possibility, in fact indeed a high probability that various bargaining units will be cross-subsidizing each other, and that is the sole purpose of doing costing in public enterprises, to identify the costs imposed by those who are imposing the costs so that you can charge them fees, prices, rates, whatever you want to call them, so that if you -- if you are lumping other bargaining, all bargaining units together, or additional bargaining units, you are increasing the possibility that there will be cross-subsidization between the so-called bargaining units that you are lumping in.

* * * *

[396]Q. I am saying that -- I am saying does the averaging-across-bargaining-units method which was followed by the union here increase the risk that nonmembers will be compelled to subsidize non-chargeable activities?
A. Yes. With the way that they have done it here, yes.

* * * *

MR. LAJEUNESSE: Again, why is that sir?

THE COURT: The answer is obvious, isn't it?

THE WITNESS: That is always what I tell my students. But I am afraid that rules are a bit different. It is due to the fact that you are lumping together various units that are not necessarily related in the sense that they impose costs on the system in the same way or to the same degree. And the methodology of economics is, is to go down to the lowest unit, the individual in fact, figure out what costs he is imposing, and charge those prices. That is what actually happens in a market.

BY MR. LAJEUNESSE:
Q. But we can't do that here.
A. Okay. We can't do that here. The question is, you want to keep the unit as small as you possibly can so that you can [397]make the proper identification with the individuals imposing the costs so that you can charge them.

Q. Two final questions. What is your opinion as an economist of the theory that bargaining expenses in other units are related to the duties of the union as exclusive representative of the employees, in this case the Ferris bargaining unit, because they set a pattern for bargaining which makes bargaining easier on behalf of the Ferris employees?

MR. SCHMEDLEN: Objection, Your Honor. That is not in controversy. It is stipulated in the pretrial statement that that relationship occurs, and so it is just not a point that is relevant.

THE COURT: I did not believe it was in controversy, either.

MR. LAJEUNESSE: My question, Your Honor, is not whether the theory exists. My question is whether -- this is an impact question -- whether there is an impact economically that has any, ah, relationship to the methodology of determining the fee.

THE COURT: I am going to let him answer in the interest of time, please.

THE WITNESS: I would say that that is a, a hypothesis, but it hasn't met the test that, I don't see any empirical evidence. It is an interesting hypothesis [398]that you get stage one in some plane, place as a chain reaction, and it does have effects on down the line; but it is something that would have to be scrutinized and tested empirically. So my answer is I don't know. It is a hypothesis that has to be tested, and I don't know what the answer is.

I can only speculate in the sense that there is a lot of literature in labor economics indicating that, that even the union versus non-union wage differentials are virtually nonexistent.

So it is a question -- it is questionable whether unions have any effect on wages. So if you take that back to this hypothesis, whether bargaining in one unit ultimately affects bargaining and wages on down the line, I would suspect that given what we know about wages in union versus non-union comparables -- my guess is the evidence won't support the hypothesis. But I don't know unless I see the evidence.

THE COURT: It would be hard, wouldn't it, to do the kind of empirical study that you as an economist would want to do about that question? For instance --

THE WITNESS: It would be a difficult test.

THE COURT: For instance, some of the things that you haven't heard here in all of this trial -- this trial started after the birth of Adam shortly or after the birth [399]of Eve, one of the two. But there are some things hard for me to quantify. For example, and by way of this small example, what a person who has collective bargaining responsibilities does vis-a-vis putting out a dinner for a politician, does that have any economic value in the collective bargaining sense to someone way down the line? I don't know how you could test that empirically.

THE WITNESS: Your Honor, it would be an extremely difficult test. There is no question about that.

Let's turn the question around. But, you are looking at the question in terms of their alleged benefits, and the question is, number one, are there real benefits, and then whom do they ultimately rest with.

Turn the question around, and let's at the extreme assume that the Ferris unit just disappeared off the face of the earth, and look at it from a cost point of view. What costs would be avoided if that disappearance occurred?

And that is how the economist comes at the cost-based pricing. So if you turn the question around, instead of always

trying to focus on benefits, and where they are if they exist, whom they rest with, turn the thing around and say if we do away with the Ferris bargaining unit what costs would be avoided by MEA and NEA, and that is how you approach the cost-based analysis and come at the cost pool, so-called cost pool issue.

* * * *

[405]Q. And wouldn't you agree that this applies equally well to your testimony here today, that different economists with different political views could reach different conclusions on the questions that Mr. LaJeunesse asked you?
A. I would respond by saying that the great bulk of the economics profession, professionals in the economics profession, as well as the literature and refereed journals in the field would agree with the statements that I made with regard to the questions that were asked by plaintiff's counsel.

You could perhaps find some economists who wouldn't agree with those, but in the broad outlines -- and what I am here to talk about is only broad outlines or methodology, and it is relevant in figuring out agency fees -- I would find it, I can't imagine any economist who would disagree, no. You can't find anything in the literature, either.

Q. I was just going to ask you that. Out of this great bulk of economists, no one has written on the subject at issue in this case dealing with how is the most appropriate way to allocate agency fees, correct, to your knowledge?
A. Ah, to my knowledge I haven't seen it directly addressed.

Q. And you mentioned that administrative feasibility, to do the kind of studies that you were talking about at the end of the direct, where you said you wanted to keep the group small. Wouldn't you agree with the following? That if you [406]have 50 different agency fee objectors in 50 different bargaining units, you would have to do 50 different tests to apply your theory?
A. That is true. But you fail to put in that where it is administratively feasible or economically feasible. And what we are talking about here is isolating this bargaining unit that we are

talking about at Ferris, and it is quite simple to figure out what the total costs, total avoidable costs to that unit would be, by hypothetically removing Ferris and seeing what costs are avoided. And this type of thing could be done with great ease.

Then if you get into the little micro adjustments down to the individual union member, that is where you would have a problem with the extension of this.

* * * *

[412]Q. Do you agree that in setting regulatory rates that cost benefits analysis has an appropriate place?
A. It has an appropriate place in terms of making investment decisions, but not pricing decisions. Benefit cost analysis is a, is relevant at the investment stage in the public sector.

What is relevant in the allocative stage is the pricing.

* * * *

[413]Q. Mr. Schmedlen asked you some questions about average costing and the utility rate-making area. In your experience those average costs were based on actual data. Is that correct?
A. Absolutely, yes.

Q. Are there other economists who agree with your views on the various subjects quoted to you by Mr. Schmedlen?

MR. SCHMEDLEN: Objection, Your Honor, hearsay.

THE COURT: It is hearsay. One can argue, I suppose that that bolsters his own opinion. So I overrule it. You may answer it.

[414] THE WITNESS: If indicated by articles and referee journals. The answer is yes.

* * * *

Q. To what would you look in making that cost benefit analysis that Mr. Schmedlen was asking you about at the end of his cross?
A. Okay. Your Honor, what I think I would do in my judgment would be to, to look at the cost benefit at two levels. One is at the cost pool level. That is the avoidable cost. Hypothetically, do away with Ferris, and see what costs are avoided. I think that kind of computation can be done at a very low cost, and obviously the benefits of doing so would be quite high relative to those costs.

Then you get down to pushing this logic down [415]to the individual nonmember. In that case the costs rise exponentially, and I am really not quite certain what the benefits are because as I have testified earlier no one knows what the benefits are, because you have this coercive system.

You don't have a voluntary arrangement where you get feedback from the individual consumer about what his benefits cost calculation is.

So we have very little guidance down at the individual level. I think we have a pretty good handle or could have a fairly good handle on the cost pooling level, but not the individual level. That would be kind of my quick reaction to that.

THE COURT: Do you, is it your testimony that the cost incurred by the union on behalf of the agency fee payors is on a marginal cost basis?

THE WITNESS: No, not at the individual level. In other words, here is a two-stage thing. What you are doing is, you are computing marginal -- avoidable costs or marginal -- at the cost pool level. Okay. And then what you are doing is after you have everything that should be in the cost pool, separate out chargeable, non-chargeable, and just average.

So in fact it is kind of a hybrid thing where you have an avoidable cost analysis, getting on down to the cost pool, the appropriate cost pool, in this case Ferris bargaining unit, and then knocking out any non-chargeables -- [416]excuse me. Excuse me -- adding the chargeables up, adding the chargeables up, which might not include everything, and then dividing by the number of

members so that you have an average fee based on those chargeables that you have added up.

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TRIAL TRANSCRIPT, VOL. III,
TESTIMONY OF JAMILLE WEBSTER
Jan. 15, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[424]Q. Beginning with 1975, would you tell the Court the different positions that you have held with the MEA and the duties of those positions?
A. Yes. I entered into the Professional Development and [425]Human Rights department at MEA in 1975. My job assignment was research. And I held that position for 10 years until 1985 when I was appointed to my present position which is associate executive director for one of the MEA's major divisions called Program Services Division.

* * * *

[451]Q. Can you tell me whether you believe the staff could keep a time sheet which could identify whether their activity was chargeable or non-chargeable and identify the bargaining unit to which the work was directed?

* * * *

THE WITNESS: No, I do not think it is feasible or practical. The activities that we involve ourselves in are complex

and very diverse. We are involved in designing programs. We are involved in developing training packages. And as a part of that process we are consulting with the PDHR consultants, consulting with the research consultants.

We might be reviewing contracts, and the complexity of the activity would be hard to isolate some piece of that activity that is one type or the other. It is a, I don't believe that it is feasible.

BY MR. GREELEY:
Q. Do you believe that you could identify an activity to a specific bargaining unit?
[452]A. Well, that is not easy to do, either. Much of what we do has a statewide significance. Whether it is the leadership level on the part of the PDHR consultant, or Professional Excellence, of Human Rights, much of our material, our training packages, have a statewide focus.

On those occasions when we are called in by a local we then may have to develop something specifically for them, but we do both the unique and as well as the statewide kind of development of programs and training packages.

* * * *

[470]Q. A laid-off member is no longer in the bargaining unit. Is that correct?
A. That is right. But members.

* * * *

TRIAL TRANSCRIPT,
TESTIMONY OF ROBERT K. MARSHALL
Jan. 16, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[3]Q. Mr. Marshall, where are you employed?
A. The Michigan Education Association.

* * * *

Q. What is your present position with the Michigan Education [4]Association?
A. I am the associate executive director for UniServ.

* * * *

[22]Q. You described the rationale for getting involved in support staff. Could you briefly describe then what actually then was accomplished on that subject in the Jackson area?
A. Yes. I started the organizing of the support staff in Jackson County with a support staff unit in, in Hanover-Horton.

Since the development of that, we believe that we have been, we believe that what I just explained has [23]worked, that the perception that there is a viable strike available to the employees has caused bargaining to improve from our standpoint, and to give us relatively more power at the bargaining table.

As a result of exploring and implementing, actually initiating the notion of expanding MEA membership to ultimately include support staff members, all non-supervisory employees in a particular district, MEA then developed a task force to develop, to explore this approach that we are using in Jackson County, ultimately created MEAO, which was a kind of a pilot project to organize support staff in Michigan -- which was Michigan Education Affiliates Organization, then became MESPA, which subsequently has become, the support staff members have become full active members of MEA rather than an affiliate organization.

* * * *

[27]Q. You have described the resistance level on how it changed as some of the results started coming in on this. What

was the position that you took in 1979, the end point of your being the zone two organizer?
A. Okay. I became the director of Organizing and Bargaining in MESPA. That position had only existed for a few months prior to me moving into it, and it was held by Larry Diebold, D-i-e-b-o-l-d, prior to my taking it.

Q. What was the purpose of the creation of this new position if you know?
A. The position was created to supervise our bargaining consultants to, ah, coordinate and supervise our organizing efforts, and also to serve as a, a, the administrator of MESPA which was then a, an, an affiliated organization with MEA.
[28] We have used the term "associated to," and we used the term interchangeably, but to differentiate between MEA being an affiliate of NEA, we called MESPA an associate, associate of MEA. I know it is confusing, but they are technically associated organizations.

Q. What does the acronym MESPA stand for?
A. Michigan Education Support Personnel Association.

* * * *

[33]Q. Did the MESPA organized support staff have the same new structure as MEA?
A. No, they didn't. They had a new structure based upon, at that time based upon hours worked. So because of the different types of employees that you are dealing with, the dues structures if they were full-time it was one amount, full-time meaning 30 hours or more a week. They worked from 20 to 30 hours a week, that meant 75 percent dues, so forth.

* * * *

[50]Q. Mr. Marshall, there has been a fair amount of testimony in this case dealing with the feasibility of time sheets that would both allocate all of the work of UniServ directors to either

chargeable or non-chargeable, and then further allocate it to particular bargaining units.

Based upon your experience as somebody, someone who has been both UniServ director and a supervisor of UniServ directors, could you tell the Court whether you think that is possible, separate from whether or not it is something that you agree or disagree with?
A. I believe it is virtually impossible.

* * * *

[61]Q. Mr. Marshall, you were the director of the MEA Department of Organizing and Bargaining for most of 1981-82. Is that correct?
A. You are three-fourths correct.

Q. And during that fiscal year, the Department of Organizing and Bargaining had three components, organizing, bargaining, [62]and higher education. Is that correct?
A. Yes, the higher ed coordinator, Art Rice (ph.sp.) was assigned to me. I was his supervisor.

* * * *

[81] MR. LAJEUNESSE: Your Honor, I have handed the [82]witness what is marked for identification as plaintiffs' Exhibit 625. I am sorry. I picked up something. I already had the one that I wanted. 627. I will also provide a copy to the Court. That was in the exhibit list as defendants' "Q." Could you examine plaintiffs' 627, Mr. Marshall, identify it for the record?

THE WITNESS: All of it?

BY MR. LAJEUNESSE:
Q. I think the exhibits are all of the same -- this is a composite exhibit containing memos of all of the same nature. I think that you will quickly see that.
A. Well, they are all weekly reports to Chuck Williams who was at that time my boss, from either me or Eric Hansen, who was

one of the organizers working for me, or memos to me relative to those reports from somebody who was working for me.

MR. LAJEUNESSE: Your Honor, I move that plaintiffs' 627 be admitted.

* * * *

THE COURT: I don't know. I will receive them.

* * * *

[83] THE COURT: It does appear to be a separate memorandum, and is a separate memorandum, but isn't attached in mine. But it doesn't make any difference. They are all weekly reports. I will receive them.

* * * *

[98]Q. The functions of the higher education component of organizing and bargaining included providing higher education local associations with specialized services and staff coordination concerning negotiations. Is that correct?
A. Yes.

Q. Also included providing local associations in higher education with specialized services and staff coordination concerning lobbying. Is that correct?
[99]A. Yes.

Q. And, finally, in terms of general categories, it provided higher education local associations with specialized services and staff coordinations concerning research. Is that correct?
A. Yes, I believe so.

Q. I believe you testified that Art Rice was the higher education coordinator in 1981-82?
A. That is correct.

Q. Did his activities in 1981-82 include among other things the coordination of the Preserve Public Education program with regard to higher education?
A. I believe so.

Q. And in association with that he also delivered the message of the MEA to the local associations in higher education that they should participate in the election 1982 program. Is that correct?
A. I don't know that.

MR. SCHMEDLEN: If you want to propose a stipulation it may save time, Mr. LaJeunesse. I don't know what you mean by the election '82 program.

MR. LAJEUNESSE: I think other documents show what the election '82 program was. If you want to stipulate that at the March 3, 1982 meeting of the Thirteen-E coordinating council Mr. Rice spoke on political involvement and importance of every teacher becoming politically active, and stressed that [100]we must be involved in political activity at all levels for election '82, election '82 being in capital letters -- do I have a stipulation?

MR. SCHMEDLEN: Your Honor, if Mr. LaJeunessse includes the sentence that follows where he left off, says there must be additional revenues for higher education, I will stipulate to that whole thing being in the minutes of the coordinating council.

MR. LAJEUNESSE: Fine.

THE COURT: Done. I take it Election '82 simply means the election year 1982?

MR. LAJEUNESSE: Your Honor, I believe that the documents show that that was the specific program of the union.

THE COURT: I am talking about simply what Election '82 means.

BY MR. LAJEUNESSE:
Q. Mr. Rice also administered what we have, in many of those acronyms, referred to as MAHE. Is that correct?
A. Dr. Rice was the staff liaison with MAHE.

Q. That was the Association of Higher Education Members of the MEA. Is that correct?
A. Yes. Basically, an internal caucus within the organization.

Q. Why did the higher education locals need a separate [101]association, a separate office, and a separate association?
A. Because the higher education units were, which are served through UniServ, are located all over the state and have some unique needs and concerns that weren't being addressed totally in the various field locations.

So we created a position called higher education coordinator to deal with those concerns and those needs from a Lansing based operation and work involved.

* * * *

Q. I will add to that. I will state it. Higher education is a very specialized field requiring specialized staff and expertise for the purposes of representation by the Michigan Education Association?
A. Yes and no. Many of their needs are not unique and not specialized. They do have some unique special needs. And because they do have some that are unique, we provide some unique special staff help.

By and large, the needs around at the table [102]bargaining and grievance processing locally is not a particularly specialized need, specialized situation. But their funding is different than K-12, and we need to deal with funding needs for higher education as a specialty of the entire educational arena.

* * * *

[106] THE COURT: Maybe, maybe. The objection is overruled. Is it true that higher education units compete with each other for students but K-12 public education units do not?

THE WITNESS: The first half is definitely true. The second half of the statement is almost always true. There are some forms of competition for students among public schools.

* * * *

[107]Q. Was that distinction between higher education and K-12 education one of the reasons that were expressed by members -- restate the question. Was that distinction between higher education and K through 12 a reason for resistance among higher education members of the MEA to participate in multi-association bargaining organizations?
A. That may have been a reason that higher education members, a MAHE member or a MAHE leader, might have stated. It is not my perception that that would have been the, the significant reason why they didn't participate as much in multiple association bargaining organization, MABO's, unified bargaining. Well, I can't say MABO without telling you what it means.

THE COURT: I want you to do that. Do you have a maybe as well as a MABO that you can tell me about?

THE WITNESS: I don't believe so, but maybe. I believe the primary reason was a sense of elitism.

THE COURT: Elitism.

BY MR. LAJEUNESSE:
Q. Mr. Marshall, higher education members of the Michigan Education Association were often reluctant to participate in MABO's because their interests are different from those of K through 12 units. Is that correct?
[108]A. The higher education leaders preferred to have a MABO of higher education units, and worked for some time to achieve that because they felt that they needed to coordinate

their activities statewide in bargaining. That was not successful, and as that approach wasn't successful many of them have worked with the MABO's in their area, around setting bargaining standards and so forth.

But there was -- they just felt as though they would be better off in a MABO involving higher education units, but weren't able to get such a thing going.

Q. Did they in fact express concern about participating in MABO's at all in 1981-82? Didn't they resist it?
A. In local coordinating council MABO's?

Q. That is correct.
A. I imagine quite a number of places in the state that is true, yes. And in Jackson County, the Jackson County Community College was quite interested in working with the Jackson County MABO. So they would have had a different point of view.

* * * *

[110]Q. For higher education institutions. Where does their money come from the college and the university spent? You are familiar with the sources of those monies spent.
A. Other than the fact that I know that the state has a separate higher education appropriation bill and allocates funds to higher education, I have very little personal familiarity with the funding of the institutions, personally.

* * * *

Q. Does the Michigan legislature play any part in the [111]negotiation of collective bargaining agreements in higher education?
A. Yes. Indirectly. They provide the funds.

Q. But they play no direct part in the negotiations?
A. The legislature?

Q. Of the agreements? Yes.

A. The at-the-table-bargaining process does not have a representative in the legislature physically present. That is true; but what is bargaining? They are greatly controlled by the legislature.

Q. You also -- you also agree -- I am sorry. Let me rephrase the question. The legislature plays no part in the ratification of the contract in higher education. Is that correct?
A. The Board of Trustees and the union.

* * * *

[112]Q. Are the funds of Ferris State College derived in part from tuition?
A. I assume so.

* * * *

Q. Did any of the statewide ballot issues on which the MEA has campaigned have any relationship to the contract at Ferris State College other than the relationship of having an impact on the pool of funds available by the legislature to appropriate for higher education?
A. The ballot issue as I recall related to funding. I am trying to think -- Smith-Bullard.

Q. I am saying, do they have any relationship other than the funding, anything more direct than that?
[113]A. I am, I am trying to recall what ballot issues there have been. Parochiad issue would have had, could have or would have had an impact. I don't -- I don't know. Yes, I would assume it would because it would make it possible for public funds to go to private schools. That would have an impact.

Q. That is funding. I am looking for something other than funding. I mean direct relationship.
A. I don't recall other ballot issues that were outside of the scope of funding. I think most of them dealt with that.

* * * *

Q. The question was whether funds which the state legislature authorizes and appropriates for higher education institutions are earmarked for the payment of certain items, i.e., salaries and benefits under the institution's collective bargaining [114]contract?
A. I don't know.

Q. You don't know that --
A. I don't know.

Q. That they are appropriated for the general purposes of a higher education institution?
A. I assume that, but I don't know that. I have never seen the receipt of the money sent from the state. I haven't ever examined the categoricals to see if there was any correlation.

Q. You have never heard of a case, you don't know of a case where the legislature has passed a bill saying these funds are appropriated to pay the salaries of the teachers under "x" college?
A. The reason that I say that --

Q. It is for general funding?
A. It is like Michigan's lottery fund. Michigan's lottery money is all designated for education. That doesn't really mean that this money really goes there. It just means that at least that much out of the general funds has got to go there. I don't know if there are any provisions in the way that the higher ed or ed act is written to allocate a certain percentage or not.

* * * *

[115]Q. MESPA was a separate union in 1981-82. Is that correct?

MR. SCHMEDLEN: Your Honor, I think that calls for a, such a confusing legal issue, that if he wants to ask factually what the relationship is -- but that really gets complicated, and I don't think it is helpful.

MR. LAJEUNESSE: It was separately incorporated in 1981-82. Is that correct?

THE WITNESS: That is correct.

BY MR. LAJEUNESSE:
Q. Did the Professional Excellence Services of the Program [116]Development and Human Relations Department have applicability to MESPA bargaining units?
A. Which part? Professional Excellence?

Q. Professional Excellence?
A. Ah, no, not to any significant degree.

Q. The Teacher Outplacement Program had no applicability to --
A. No, we didn't have a bus driver on placement service or anything like that.

Q. The services of the higher education coordinator had no applicability to MESPA units. Is that correct?
A. No, not true. Higher ed, we had ESP units in higher ed. Higher ed coordinator would have been concerned with all of our members.

Q. Is there a difference between the kinds of issues that are bargained in teacher units and those bargained in support personnel units?
A. Yes, there are some differences and some similarities.

* * * *

Q. Do you remember testifying at the Bridgeport-Spaulding hearing?
A. Yes.

[117]Q. Do you remember testifying that the difference between the kinds of issues that are bargained in teacher units or faculty units and support personnel is quite significant?
A. I think that I testified that there are some issues bargained in the support staff unit that are dramatically different than teacher contracts, but I don't believe that I testified that the whole collective bargaining agreement is totally different.

I think that I used an example of hours where when teachers were on a salary schedule, and with other types of bus drivers or custodians or aides were on an hourly rate, they are dramatically different. So there are issues that are significantly different.

* * * *

[120]Q. Did you say at that hearing that the passage of millage is, quote, not a union management issue, it is a school community issue, end quote?
A. I would have -- I may have said those words, and I would like to see the context in which I said them.

Q. I am showing the witness a transcript of the proceedings, volume five in the Bridgeport-Spaulding cause. Mr. Marshall's testimony resumes on page three through page 103. Here on page 89, that is the statement that I had reference to, Mr. Marshall.

* * * *

[121]Q. Did you testify as I have stated?
A. Did those words appear? It says millage is a source of one of the -- do you think that rapport had any effect on your ability to adjust to grievance -- I was demonstrating at the time --

Q. Just answer the question, Mr. Marshall. Did you make the statement which appears here?
A. Absolutely. Millage is a source, one of the major sources, and in some districts almost a total source of revenue, and (reading) it is in everybody's self-interest in a school district to get an appropriate millage passed. That is not a union management

issue. It is a school community issue of trying to get funds to operate the district.

Q. Thank you. That is all we --
A. Noticing the nature of the cooperation --

Q. You did make that statement?
A. Yes, it is in the transcript there.

* * * *

[122]Q. Does the settlement of an issue in bargaining in a bargaining unit not represented by the MEA on occasion set a pattern for the MEA units?

[Colloquy of counsel and court concerning overruled objection omitted in printing]

[123]A. It couldn't set a pattern by itself if isolated, but it could affect the outcome, especially -- it would also depend upon when it was settled. If it was like in an area where there is only one AFT unit in the entire three-county area, and they are all by themselves, and they settle first and low, they could affect the MEA unit.

If it happened late and most of our pattern was already settled, and it came in different, then it might not have any effect at that time.

* * * *

TRIAL TRANSCRIPT, VOL. III,
TESTIMONY OF BARRY HAWTHORNE
Jan. 17, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[538]Q. Mr. Hawthorne, where are you employed?
A. I am the executive director of the Private Industry Corporation of Wayne County.

Q. Have you ever had employment in the labor relations area on behalf of a labor union?
A. Yes, sir.

Q. Would you briefly describe that experience and the [539]approximate time frame?
A. Yes, sir. I was an international representative for Service Employees International Union representing Wayne County Sheriffs Deputies Local 502 as well as other police unions for the Service Employees Union for approximately a year, just about a year, year and one-half in the mid 70's.

Q. Have you ever worked in the public sector labor relations arena on behalf of a public employer?
A. Yes, I have. I worked for approximately a year, year and one-half as a labor relations analyst for the Wayne County Labor Relations Board which is charged with administering labor relations for Wayne County government.

Q. Have you ever worked for a neutral state agency involved in labor relations?
A. Yes, sir. I have had two and one-half years of direct experience as acting director of the Bureau of Employment Relations, Michigan Employment Relations Commission, from October, 1980 through April of 1983.

* * * *

[540]Q. Just to make sure that I am clear on this, did you hold more than one title within MERC during the time that you were employed there?

A. Yes, yes, sir. I served as deputy labor director for the State of Michigan for approximately five years from 1979 [541]through the, almost completion of 1983. I served in that capacity for two governors, both Governor Milliken and Governor Blanchard.

I also served in the capacity for three labor directors under, initially Pat Babcock who is currently director of the Mental Health for the state of Michigan, and then under a William Long who replaced Mr. Babcock. He is currently Public Service Commissioner for the state of Michigan, and S. Martin Taylor who is currently the executive director in Detroit.

• • • •

Q. Based upon that experience in the labor relations area that you have testified to, can you tell the Court whether there is something that you refer to as pattern bargaining or [542]pattern contract settlements?

A. Yes, sir. Pattern bargaining is, is where -- well, it has been recognized throughout the state for at least since I have been affiliated in the labor relations arena with, given, given a specific training to labor unions and management groups on a frequent basic, frequent basis. And it is both in the public and in the private, private sectors.

That is where you take a specific geographical area and a specific labor market that, that you look at the specific positions or classifications of which are being negotiated.

You also look at the types of communities, the similarity of geographical region, and that, that usually labor unions such as UAW, say, AFSCME, the Michigan Education Association of course, the Michigan Federation of Teachers, when approaching bargaining attempt to establish specific criteria based upon the labor market in which they are bargaining that is shared with all of the agencies or all of the respective labor unions within the particular area.

And goals and objectives are established for the bargaining unit. This is also very common on the public education management side as well as management in the whole of my experience with the private sector, where there are labor studies done in the specific area, and that information is shared within a specific

industry. Specific wages rates [543]are discussed as well as fringe benefits. So that an employer when they are approaching the bargaining table does so in the light of a fabric of the labor relations activity that is going on in a particular area.

• • • •

[544]Q. What I want you to describe for me if you would is the effect after this pattern contract is set, settled on, on other contracts that are negotiated by that same labor union or its affiliates.

A. Well, I think it does have an effect. For example, if, if well, we have had some cases on point specifically, and early, late 1979, early 80's, that the state went through an economic depression. We were having -- and that was being felt very much in the public sector in the budgets that were [545]coming out at the state and local levels. And then it meant that both management and labor had to take a serious look at the resources and allocate them to the best possible means. And in doing that, we looked specifically at the issues in specific labor relations agreements that were occurring throughout the state, looked carefully at fringe benefits. And mediators, for example, report on a regular basis that, the issues that are in dispute. They provide those reports on a monthly basis as long as, as well as with the status of the labor relations agreement, to the administrator of the Michigan Employment Relations Commission.

That is reviewed regularly at the meetings of the commission. We are therefore able to detect a pattern.

We provide specific training for both, our staff to give them the best benefit of knowledge in a specific area, for mediators when dealing with the parties. And more specifically this came into being in the late 70's with some of the school districts that it had occurred in Southeast Michigan. Of note was with the NEA, we had pattern-setting bargaining units that occurred with the Gibralter, Woodhaven, Romulus, and I have forgotten the name of the school district. But all of the districts went out on the strikes. Employers on the other hand were meeting, conferring separately. And that, we got within one -- it was between employers who wanted to settle it at 28 and one-half percent

increase in wages [546]over the three years, and the union wanted 29 percent, which from a professional standpoint when the mediators looked at it was half a percentage away or about eight cents an hour it amounted to, and we worked very hard on that issue.

But when the first contract settled, virtually the other three contracts settled within a number of days. So that you can see that the bargaining pattern does affect all the other, the benefits of the other employees.

In other words, if one district was able to make gains in a specific area by sharing that information with other school districts, they would, ah, the demands would be presented similar in others, and then if there was a pattern that was established, and if the employers indeed saw it was being in the other districts they felt more comfortable in giving increase in the fringe benefits or the related areas.

It works to the vice-versa also for employers, that if employers make some inroads in some management rights or prerogatives in one area they will attempt to do that in a specific zone or region.

Within Michigan we tended to look at, at least when I was in the Michigan Employment Relations Commission, we had a Detroit regional office, and there is specific training given to staff for the mediators assigned there. The Western Wayne County was treated as a separate area, and the [547]Traverse City area, the staff was assigned, and the U.P., Upper Peninsula of Michigan. They had, each area had specific issues that were unique to that specific geographical area. And the employers -- and you find it again, that labor disputes tended to be settled along the same lines, that the issues that were coming up in an area tended to be the same -- not in all instances, not in all instances, but I would say across the board in my experience, yes, it would.

* * * *

[553]Q. Mr. Hawthorne, besides your full-time employment with the SEIU, have you ever been paid for performance of services for a labor union on any occasion?
A. For a labor union I have served one time as a fact finder.

Q. Have you ever been present at any sessions for workshops [554]held by the Michigan Education Associations?
A. Yes. Well, when I was labor deputy director, and director of MERC, I was frequently called in to give overviews regarding the status of labor relations as well as all other programs that the Department of Labor would have administered. So as well as doing it for management groups and other, other labor organizations. This would be the state MEA usually at their annual convention, I did speak on occupational safety, collective bargaining and other issues.

Q. At their annual convention or at their --
A. At the convention.

Q. Or at the negotiation workshop?
A. The annual convention. I distinctly recall doing at the negotiating workshop that was held in Midland with the MEA and all of the zone directors, and also met on a regular basis with, with I would say, you know, Warren Culver and others from the MEA as well as management or other labor organizations as part of my regular duties.

* * * *

[556]Q. Does whether a contract is pattern setting from one bargaining unit to another depend upon whether the two units are the same geographical area?
A. It depends upon the issue. If the issue -- I guess that would depend upon the issue. I would say from my experience. Usually, the pattern setting would be by a specific geographic region, but I do take into account the overall state and national statistics for a specific classification if you are bargaining wages. So I would say yes, you would look at the geographical area, but there are also statewide implications.

Q. The effect of a settlement of a contract in Alaska in a National Education Association bargaining unit would set little precedent for a contract in Kalamazoo. Is that correct?

A. Let's take an issue like safety and health. If a bargaining unit establishes a contract with a specific right to know legislation in a safety and health clause, and that is brought to the table in Michigan, it could be precedent setting in Michigan. But as far as the wages, the wage rates in the state of Alaska versus the state of Michigan, I wouldn't say that would be comparable. But you would look at the wage rates for Michigan and the surrounding south and ea[illegible] of Michigan states, such as the wage rates in Ohio, and Indiana or Wisconsin, in preparing wage salary surveys. That [557]is done both by management and labor.

Q. Whether a contract is pattern setting from one bargaining unit to another also depends upon whether the two units are of similar types of employees. Is that correct?
A. That is correct.

Q. For example, a school janitors' unit would set little precedent for college faculty?

MR. SCHMEDLEN: I stipulate, Your Honor.

BY MR. LAJEUNESSE:
Q. Whether a contract is pattern setting from one bargaining unit to another depends upon whether the two units have the same type of employer. Is that correct?
A. That is correct.

* * * *

[558]Q. I am sure, Mr. Hawthorne, that we can think of specific items in any circumstance that might have an effect on something somewhere else, but in terms of general effect comparability depends upon geographic area and depends upon the type of employee. Is that correct?
A. I have seen in my experience over 10 years collective --

Q. My question isn't what you have seen over 10 years.
A. I am just saying --

Q. Or specifics on, or specifics. I am asking in general.
A. It has been argued that anything that could possibly impact on a collective bargaining dispute has been thrust in on comparability, but generally, yes, you look at the type of position and the area. But employers as well as other groups try and compare the types of like classifications.
[559] For example, Republic Airlines in the area is looking at right now in Southeast Michigan is looking at reservation agents and how that relates to clerical workers as to the effect of word processors. So it is both in the public and private sectors. So you do take, there is a whole universe of criteria that can be applied, and how that is being applied is constantly, constantly changing, as does labor relations, the flavor of labor relations agreements in Michigan.

Q. Based upon what you just said, Mr. Hawthorne, it is correct to say that comparability does not depend upon the identity of the bargaining agent?
A. No, I didn't say that. It doesn't actually -- there are other factors that may also be considered. But basically you look at the bargaining agent. For example, if the MEA is bargaining with specific groups and a specific area, they will compare the MEA groups as to what those members are getting as opposed to others. The same with the Michigan Federation of Teachers will compare their types of bargaining groups.

Obviously, there you can also add additional, you know, criteria into those programs. And in the AF of L-CIO segment, when you look at, at a UAW local versus a machinists local from the AF of L, there is a wide disparity between the types of bargaining units that come about [560]basically because of the skill and background of the negotiators for the specific units.

Q. A[nother] labor organization's contract could set a pattern that would assist MEA bargaining units.
A. That is true.

Q. I believe we have explored the, well, the effect of geographic units, and the type of employee on pattern bargaining. I am not sure I have asked, so I am going to ask it again if I have not

already asked it. Whether a contract is pattern setting from one bargaining unit to another depends upon whether the two units have the same type of employer?
A. Depends upon the same type of employer and who the bargaining agent also is, can impact it.

Q. The effect of a contract in one unit is less when the two units have a different kind of employer? For example, if one is a K through 12 school district and the other is a four-year university?
A. You are asking if there is a distinction in bargaining between higher education versus K-12. I would say that is correct.

Q. That is the answer to my question. Are there other economic variables other than geographic area, type of employee and type of employer which might affect whether one contract sets a pattern for another?

[561] MR. SCHMEDLEN: Your Honor, we will stipulate to that in part because he has already given at least six or eight of those other ones.

THE COURT: All right.

BY MR. LAJEUNESSE:
Q. Does the state of the economy affect whether or not a contract is pattern setting or not?
A. Yes.

Q. Does the number of employees in the unit affect whether it is pattern setting or not?
A. Yes.

Q. Even amongst similarly situated units, bargaining in one does not always set a pattern for another. Is that correct?
A. Using the term not always, I would say yes.

* * * *

[562]Q. Does pattern bargaining occur in the private sector as well as the public sector, yes or no?
A. Yes.

* * * *

TRIAL TRANSCRIPT,
TESTIMONY OF CATHERINE ANDERSON
[AND STIPULATIONS AND ADMISSION OF EXHIBIT]
Jan. 17, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[2]Q. Who is your present employer?
A. Med-Ed Data Network Association.

Q. Is that connected with the Michigan Education Association?
A. Yes, it is. MEDNA, for short, provides administrative services to the MEA. That includes all accounting and finance functions, building, grounds, data processing, membership processing.

* * * *

[3]Q. Are you a certified public accountant?
A. Yes, I am.

* * * *

[4]Q. Are you familiar with the MEA accounting system as it existed in 1981, 1982?
A. Yes, I am.

Q. How did you become familiar with that system?
A. As I mentioned, I was transferred from MEFSA to the MEA accounting department in September of 1982. The fiscal year ends August 31. So it was my responsibility to make sure that, that the '81-82 fiscal year books were properly closed and the audit was completed.

• • • •

[19]Q. Now assuming that you have got a standard that everybody agrees upon, assuming that you have got a standard that not only everybody agrees upon but can apply accurately, what would be the burden on the accounting system of putting in place such a time sheet system that would identify and allocate time to each and every bargaining unit?
A. To each and every bargaining unit?

Q. Yes.
A. I couldn't even begin to really imagine it. We have 900 [20]bargaining units or so, approximately 900 bargaining units at the MEA. If, if what I heard you say was our employees are required to keep time according to which bargaining unit it applies to, I can't imagine it.

• • • •

[73]Q. Okay. Without attempting to comment on that, realizing your answer is somewhat speculative, if you were going to set up a system that requires you to identify chargeable versus non-chargeable at a specific bargaining unit, do you have any idea what would be involved in setting up that system?
A. I, I can't imagine a bargaining unit by bargaining unit.

Q. When you say you can't imagine it, is that because it would be so easy to do or so hard to do?
A. So hard to do.

• • • •

[73] MR. LAJEUNESSE: We have a stipulation that the counsel, that the parties have agreed to, to a stipulation of facts with regard to defendant Ferris Faculty Association. I will just proceed and read each of the stipulations, and Mr. Schmedlen will confirm that defendants agree.

• • • •

[74] MR. LAJEUNESSE: Two, the Ferris Faculty Association's expenditure of $149.99 for a Preserve Public Education conference, also stipulated in paragraph 20 of the uncontested material facts, at page 17 of the pretrial order, was for travel expenses to the MEA legislative/political action conference held on February 4 through 6, 1982, at Flint, Michigan.

MR. SCHMEDLEN: We so stipulate.

MR. LAJEUNESSE: Three, no strike or job action occurred at Ferris State College in 1981-82.

Some preparations for a possible strike were made in the fall of 1981 by the Ferris Faculty Association. The following expenditures of the Ferris Faculty Association stipulated in paragraph 20 of the uncontested material facts, at page 17 of the pretrial order, are variously characterized in the Ferris Faculty Association's records as, quote, strike, unquote, expenditures, quote, [75]job action, unquote, expenditures, and, quote, crises, unquote, expenditures, colon, crises center/strike headquarters, rent and other expenditures, $3,821.04;

Newspaper advertising, $256.20; signs, posters and buttons, $141.21.

In addition, $75 was spent by the Ferris Faculty Association for rent for a meeting hall for a membership meeting on Monday, October 12th, 1981, for the purpose of voting whether to accept the college's contract offer or support a strike.

MR. SCHMEDLEN: We so stipulate, Your Honor.

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MR. LAJEUNESSE: For the purposes of ease in relating that stipulation to the pretrial order, stipulation, the $3,821.04 which was listed as, as whatever, strike headquarters, and rent and other expenditures, is a total of the amounts contained on page 17 and paragraph 20, listed individually under the general heading crises center/strike headquarters.

THE COURT: I got you.

MR. LAJEUNESSE: Your Honor, in relation to the issue of the chargeability of the strike preparations by the Ferris Faculty Association for which expenditures were made in 1981, plaintiffs move the admission of plaintiff's 33 as [76]to which no objection was, it was stipulated in the pretrial order that there would be no objection to the admission of plaintiff's 33.

* * * *

[77] THE COURT: I will receive Exhibit No. 33.

* * * *

TRIAL TRANSCRIPT, VOL. IV,
TESTIMONY OF ELIZABETH M. BAKER
Apr. 23-24, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

[Title omitted in printing]

* * * *

[567]Q. Where are you presently employed?

A. I am employed by the Michigan Education Association in East Lansing, Michigan.

* * * *

[568]Q. Can you also outline your employment history with the MEA, please?
A. I started working for the Michigan Education Association in 1970. I was employed as a UniServ director in the city of Flint, working for the UniServ, excuse me, the United Teachers of Flint which is a local UniServ unit of Michigan Education Association.
Should I continue?

Q. Please.
A. I was employed by the United Teachers of Flint from 1970 through about the fall of 1983 -- '73. And in 1973 I went to work for MEA at its headquarters in East Lansing, and as the State Agencies Consultant.
In 1975, after the death of one of the lobbyists, I was literally assigned to be an MEA lobbyist or legislative consultant. I served in that capacity until the summer of 1981 when I was promoted to management as the director of the Government Affairs department of MEA.

Q. Have you held the position of director of Government Affairs department since 1981?
A. Yes, I have.

[569]Q. During the 1981-82 fiscal year you were the director of Government Affairs?
A. Yes.

Q. Did you also serve as the lobbyist in that department during that year?
A. Yes. As a part of my employment as director I also carry the title as chief lobbyist for the Michigan Education Association.

Q. As director of the Department of Government Affairs in 1981-1982, what staff were you in charge of?

A. I was in charge of all of the then Public Affairs staff. Prior to that we had been a joint division of Public Affairs and Communications staff. My staff consisted of the three lobbyists including myself, three political action consultants. There was a higher education consultant, state agencies consultant, and a retirement consultant.

* * * *

[578]Q. Can you explain how higher education, particularly as an example, Ferris State College, is funded in the state of Michigan?
A. All of the money for higher education in terms of the way we work with it comes from the state legislature. The other half of their money -- I won't say half, but the other part of their money comes from tuition as you know.

* * * *

[588]Q. Are millage elections held which affect the funding of higher education institutions in Michigan?
A. They are held for community colleges but not for four-year institutions.

* * * *

[590]Q. Turning your attention to footnote four of Exhibit No. G, that footnote indicates that you calculated 40 percent of the political action consultant's time was spent on non-chargeable activities, and, therefore, 60 percent was spent on chargeable activities. Were those your initial calculations?
A. No. Initially I had calculated the 70 percent of their time was spent on chargeable expenses or activities.

Q. And that was reduced to 60 percent?
A. Yes.

* * * *

[607]Q. Your understanding of collective bargaining is that it is a process that occurs at the local level between an employer and the employees' bargaining representative for the purpose [608]of obtaining a contractual agreement between those two parties. Is that correct?
A. That is the definition I have used in the prior testimony, and that is the definition that I am using now, collective bargaining.

Q. In 1981-82, did any of the staff of Government Affairs department participate in that process of collective bargaining?
A. Directly or indirectly?

Q. Directly.
A. No, Government Affairs staff do not bargain contracts. They do bargain with the legislature, and in terms of when I say interacting, lobbying is a bargaining process. They do bargain and with the State Board of Education. That is lobbying, again which is a bargaining process, trying to get, to attain our goal.

Q. It is not collective bargaining?
A. But it is not collective bargaining.

* * * *

[609]Q. What is your understanding of contract administration, Ms. Baker?
A. At the local district level?

Q. Yes.
A. Yes. It is my understanding that that is the implementation of the contract that has already been collectively bargained.

* * * *

Q. What is your understanding of grievance adjustment?
A. It is my understanding that -- I did not hear your last [610]word.

Q. Adjustment?

A. Grievance adjustment is again, if an item has been bargained in the local agreement, then the grievance or adjustments are handled at the local district level between the UniServ staff and the grievant. It is a process by which there is an address of our alleged wrongdoing by the local board through its principals, whoever is, who is the supervisory person, and the grievant, the member.

* * * *

[628]Q. Your Honor, I am handing the witness what has been marked for identification as plaintiffs' Exhibit No. 197, plaintiffs' Exhibit No. 201, plaintiffs' Exhibit No. 204. If you would examine those, Mrs. Baker. Would you identify those documents, Mrs. Baker?
A. The first document seems to be an invitation to, well, I will just say what it is. It is from the Government Affairs department, and it is formulation of training, of screening and endorsing committees, and we attach the 1982 legislative political action conference enrollment form. They are being invited to attend.

MR. GREELEY: Your Honor, maybe we can speed things along. I will stipulate that 197 is a memorandum regarding the formulation regarding training and screening and endorsement committees; that 201 is a memo regarding legislative political action conference held during the 1981-82 fiscal year; and that 204 is the administrative guidelines for congressional contact teams, and 204 is a legislative contact team agenda for conference.

* * * *

[629]Q. Mrs. Baker, do all of these documents deal with the legislative political action conference, 1981-82?

MR. GREELEY: Stipulate.

BY MR. LAJEUNESSE:
Q. Was the expense of that conference included as a non-chargeable cost in your determination?
A. It is non-chargeable.

Q. Including the time of the legislative consultants at --
A. The whole activity.

Q. The seminars, sessions?
A. All of the involvement of the staff in this conference has been charged as non-chargeable.

Q. How could I verify that?
A. The -- I have to repeat myself about the job that I have. The performance goals of the individual include that there shall be a legislative PAC conference. They are expected to participate ir that. That has been determined through the consultation with the attorneys, with Pete McNenly and myself, that this is an activity that we cannot charge.

Q. So that you are saying that their time, the time of the consultants in preparing for and conducting this training, in conducting this training conference, would have been considered non-chargeable or was considered non-chargeable?
A. Everything that related to this conference was non-[630]chargeable.

Q. How about the expenses associated with the conference other than the time of consultants?
A. I don't understand.

Q. Is that considered non-chargeable?
A. What expenses? I don't understand.

Q. Printing materials, renting the hall?
A. You are talking about consultants' time in doing this?

Q. No, I am talking about the money that the Michigan Education Association expended to print programs and other materials used?
A. It is all included in the Government Affairs budget. It is all included as an activity in those things that we have identified as not chargeable.

* * * *

[632]Q. If you look at defendants' Exhibit No. A, page 24, if you will tell me which line item would reflect the expenses for the regional training seminars, the advanced political action training seminars, and the legislative political action conference that we have just discussed?
A. You mean where did the MEA put the money?

Q. Where would the money have been?
[633]A. On the political education.

Q. For all three?
A. What?

Q. For all of those three types of sessions, were charged under political education?
A. Yes. I would like to make an addendum. If we brought in contact teams, if you will note that item 23, that would have included their costs for coming to that kind of a conference.

Q. That would have been under item 23?
A. Yes.

Q. And no portion of that was considered non-chargeable. Is that correct?
A. That is not a chargeable expense.

MR. LAJEUNESSE: Your Honor, I move the admission of 197 and 201, 204 with regard to the exhibits, the exhibits with regard to the legislative, political action conference.

MR. GREELEY: Same objection.

THE COURT: The Court will receive 197, 201, 204.

* * * *

[642]Q. Did the political consultants provide assistance to locals, school board elections, in 1981-82?
A. Excuse me. If there had been any elections in 1981-82, the job performance of the political action consultants would have been to give that technical help that I described for millage election, and to make them aware of the process, any training that would have been needed. Usually, the involvement in a local political school board election is handled at [643]the local level. Our members make that decision. They sometimes call on the political action consultants for technical help, and that is how to put together a campaign.

Q. Would you have included that time?
A. Yes, I would have included that time.

Q. In the school board elections as non-chargeable?
A. [In the f]orty percent non-chargeable.

* * * *

[648]Q. How does this ballot proposal to prohibit automatic pass-through for utility fuel costs relate to collective bargaining of higher education?
A. Well, if --

MR. GREELEY: We will stipulate that we consider that a non-chargeable activity.

* * * *

[650]Q. If you will turn to pages beginning at page eight, this is of course the Government Affairs department, and at page nine at the bottom of the page and continuing on to page 10 where

there is discussion of three petition drives which were underway. If you can take a second just to look at those to refresh you memory?
A. I am familiar with the three proposals.

* * * *

Q. Can you describe to us your opinion as to, tell us your opinion as to how these proposals relate to collective bargaining in higher education?
A. All three of the proposals propose to in some way change the tax structure in Michigan such that the revenue would not be the same. The first proposal which is called "Trim," a proposal that would eliminate the property tax from school millages, that particular proposal would significantly affect our K-12 and community college funding.

[651]Q. But it would have no effect on --
A. Not that one.

Q. On higher education institutions?
A. Not that one, no. The next one, the Roy Smith proposal that would place an exemption on residential and agricultural property taxes from school operated costs, et cetera, exempts any educational unit from budget cuts, protects business and industry from additional taxes, and increases the sales tax to five percent, that would have a direct effect on four-year institutions.

As I mentioned yesterday, four-year institutions receive their funding from the state legislature, from grants and from tuition. The sales tax is a method of funding education in Michigan, a portion of the sales tax.

Q. Is the sales tax earmarked for education?

[Interjection of the Court omitted in printing]

THE WITNESS: Funding for higher education is funded [652]in several ways. The state legislature provides the appropriations. How the state legislature gets its money is from

different sources for all of education. In this case the proposal you reference is dealing with the sales tax revenue. A portion of the sales tax is earmarked for education, not all of it, all education at all three levels.

BY MR. LAJEUNESSE:
Q. Where is it earmarked for education?
A. The money goes into the general fund of the state of Michigan, and it is earmarked into that fund.

Q. You didn't answer my question. How is it earmarked? What makes it earmarked for education? Is there some law somewhere that says a certain percentage?
A. Yes, the laws that dictate the funding for all education states what portion of sales tax goes to education.

The third proposal is Tisch Three. It is a proposal proposing to roll back the property tax to a level of 1980, the year 1980, thereby reducing the SEV by 15 percent until 1987. It further establishes a county tax commission in 1987 to set the tax rates, provides a cut in the property taxes for any household with income between 8,000 and $12,000, and exempts from taxes households with incomes below $8,000, limits assessment increases, and requires 100 percent reimbursement to local units of government. In this particular proposal because it is dealing with the local property taxes [653]it does not directly affect the funding of higher education except if this proposal had passed, in my opinion, it would have affected the total appropriations process.

When you are looking at the budget for funding of K-12, community colleges and higher education, and you take out an amount of dollars that you have, that you appropriated over all, you run the risk then of having to cut across the board, and we refer to that then as an executive order cut, and higher education, four-year institutions, could have been cut under this proposal.

Q. So in your opinion it was an indirect relationship between the Tisch Three proposal and the higher education fund?

A. Indirect in that higher education does not receive its funding directly from property taxes.

Q. Do statewide ballot propositions increasing taxes necessarily result in increased salaries and benefits in collective bargaining contracts?
A. As I testified earlier, the money from revenues in the state go to the general fund, and then me, meaning the Government Affairs legislative staff, bargained with the legislature, worked with that process to get the correct amount of dollars appropriated to the appropriate levels of education.

Q. But the ballot proposition itself does not mandate that [654]teachers' salaries and benefits be increased. Is that correct?
A. That was not the purpose of the ballot proposals. The ballot proposals referenced here are dealing with how revenue shall be collected, how it shall be expended, and what cuts should take place, thereby having a significant effect on the state budget.

Q. Increased salaries and benefits for teachers depend upon first your success in lobbying the legislature. Is that correct?
A. I wouldn't state it that way. I would indicate that salaries and benefits for teachers as, are a direct result of a constitutional mandate to the state of Michigan that it funds public education. The process by which we use to get that revenue is to work with the state legislature, the agencies of government and the governor, and I call it bargaining with the legislature or negotiating with the legislature to get the money back into the local districts whereby the collective bargaining process, we agree to the definition, is the process for getting the money for the salaries.

Q. In short, first if there is an increase in taxes as a result of the state ballot proposition you have to, quote, unquote, "bargain" with the legislature to get the legislature to appropriate the funds for education, and then after that [655]you would also have to bargain with the local school board to convince the members of the school board to increase salaries when it comes to bargaining time. Is that correct?
A. That is correct.

* * * *

[657]Q. You did not consider the cost of millage campaigns to be chargeable? Is that correct?
A. I did not? I did not consider it?

Q. You considered -- I am sorry. I misstated. You considered them to be non-chargeable. Is that correct?
[658]A. Millage campaigns are chargeable.

Q. I am -- I had my tongue twisted, Your Honor. I apologize. Sometimes chargeable and non-chargeable get confused. Millage campaigns were not what you refer to as inhouse campaigns, were they, Mrs. Baker?
A. Millage campaigns are for our members, for the benefit of our members, but they include the large, the population of the district in which the millage is being conducted. Taxpayers vote on millages.

Q. And the campaigns run by the Michigan Education Association are directed at the general public. Is that correct?
A. No. The campaigns for millage elections are directed at our members to get involved in the process. The millage campaign or the millage election itself is the responsibility of the local school district. There are many occasions on which the local education association, the staff of the MEA and the local school districts work together because it is in their common interests to get a millage passed.

Q. And the local association worked with the school district and perhaps with other groups in the --
A. That is very common.

Q. In the district to convince the voters to vote to increase the millage. Is that correct?
A. That is a very common practice.

* * * *

[662]Q. Four-year institutions derive no part of their funds from millages. Is that correct, Mrs. Baker?
A. I have stated that, and, no, they do not.

Q. Even --
A. Four-year institutions. Community colleges do.

Q. Even in K through 12, community colleges, do increased millages necessarily result in increased salaries and benefits under a teacher contract?
A. I think you are asking me a question of judgment based [663]upon the skill of bargainers. It is the history of MEA that when millages have been passed and bargainers have done what they are supposed to do, which is bargain equitable contracts, it has indeed resulted in higher salaries for employees.

Q. Monies that are appropriated through the millage process are not earmarked for teacher salaries and benefits? They could be spent on other things. For example, to buy school buses or make improvements in the school, and buy books, so on. Is that correct?
A. The law that allows --

MR. GREELEY: We will stipulate to that.

* * * *

[680]Q. Next bill is provide summer school tax collections?
A. A chargeable expense.

Q. How does that relate to collective bargaining at Ferris State College?
A. Oh, for Ferris State College it would have no direct relationship because it is, it is again dealing with the property tax question, K-12 and community colleges.

Q. Next bill is make property tax circuit breaker more visible?
A. We are dealing again --

Q. Chargeable or non-chargeable?
A. Chargeable.

[681]Q. How does that relate to collective bargaining at Ferris State College?
A. The faculty and other members at Ferris State College are property tax payers. Under this particular law if the circuit breaker was adopted, and I am trying to see here -- it was vetoed by the governor -- the faculty as well as the residents of that district would have benefitted in terms of getting a tax break.

Q. It affected them as taxpayers. Is that correct?
A. Yes.

Q. Not as employees of Ferris State College?
A. No, because they don't use the property tax for purposes of revenue.

Q. Any bill that MEA lobbies on, that affects the member of the MEA as a taxpayer, is a chargeable expense?
A. No. This was a chargeable expense because it directly affected K-12 and community colleges. You asked me about Ferris State, and it was trying to explain.

[682]Q. What was "Truth in Taxation" legislation?
A. It is a piece of legislation that says that the government must notify the citizens of Michigan about their taxes.

Q. How does that relate to collective bargaining?
A. Directly relates to collective bargaining in that the [683]taxation process in Michigan is another way of getting revenue to put into the budget for funding education.

Q. So any legislation that results in taxation you consider to be chargeable?
A. I am not going to go that far. You would have to give me a definitive piece of legislation, and I will tell you if that relates

directly to collective bargaining, but if it is taxation that is for the purpose of public education, it does relate to collective bargaining.

Q. Education funds are derived from the general fund. Is that right?
A. So are a lot of other things, but the answer to your question is yes.

Q. So that any legislation on which the MEA lobbied which concerned taxation for the general fund would be considered chargeable?
A. For education. I have to make that distinction because from the general fund, appropriations for social services and mental health, public health, and other services that are rendered by government.

* * * *

[684]Q. Back just quickly to income tax and inrease in the 10-cent increase in the cigarette tax. I presume that you consider those chargeable and related to collective bargaining at Ferris State College because they provided funds for the general fund of the state of Michigan?
A. Right. And as we have discussed yesterday all of the [685]funding for, from the state, all of the funding from the state -- excuse me. Let me back up. Ferris State College derives its funding for education from the state as well as from tuition and grants.

* * * *

[686]Q. Does any of the legislation listed on page 19 in the list of state issues of interest in defendants' Exhibit No. S, necessarily result in increased teachers' salaries and benefits under the contract?
A. If you are asking me to make a statement of fact if indeed in that '81-82 year there were increases?

Q. No, not whether there were increases. I am saying do any of these pieces of legislation necessarily result in increased teachers' salaries and benefits under a contract?
A. Yes, if bargained for.

Q. Which contracts? If bargained for?
A. Yes.

Q. That is not necessarily a result, though, is it? You can get what you want in bargaining. Is that correct?
A. No, bargaining is a mutual, a process --

* * * *

[687]Q. The state legislature does not negotiate or ratify or administer the collective bargaining agreements of Ferris State College, right?

MR. GREELEY: Stipulate.

THE COURT: And obviously true.

BY MR. LAJEUNESSE:
Q. The Michigan state legislature does not adopt or implement the budget of Ferris State College. Is that correct, Mrs. Baker?
A. They do not. The board of trustees are, or whatever the governance body there, adopts that.

Q. Only the board of control of Ferris State College?
A. Yes.

Q. Controls the budget and expenditures of Ferris State College?
A. I think we are in agreement. That is what I was responding to, whatever the board is. In Ferris it is the board of control.

Q. The state legislature merely provides appropriations for [688]the general budget of Ferris State College?
A. That is one of their functions.

Q. Relating to Ferris State College?
A. And other higher education institutions.

* * * *

[694]Q. I am asking in your knowledge did the Michigan Education Association through the congressional contact team program lobby for increased federal funding in 1981-82?
[695]A. To my knowledge the National Education Association through its contact team program did indeed lobby for federal funds for education.

Q. And that would have included the contact team program in Michigan. Is that correct?
A. Yes.

Q. How does that relate to collective bargaining for Ferris State College?
A. I have stated before that, that all levels of education receive their funding from several sources of funding. One of those sources of funding is the federal source. Ferris State College does receive federal dollars, comes into the state as a pass-through. Some money goes to the colleges as a direct grant depending upon what kind of research or what kind of activity is going on at the university.

* * * *

[717] MR. LAJEUNESSE: I think we have a stipulation that will simplify matters at this point, Your Honor. Mr. Greeley says that he is willing to stipulate that the following [718]report appears in the minutes of the MEA board of directors dated January 15 and 16, 1982, under the heading "school funding," quote, "Liz Baker, director of Government Affairs along with two of her associates, Al Short and John Meeder, presented the recommendation of their division for the Preserve Public Education program as well as presenting an activities schedule in Timeline for implementation of the program. Following this presentation the board members met in small groups to discuss

this recommendation, and each group reported their findings." End quote.

And then the minutes reflect that a motion to adopt the Preserve Public Education program was carried. Do you stipulate?

MR. GREELEY: I will stipulate to that.

MR. LAJEUNESSE: Those minutes referred to an activity scheduled in Timeline for implementation of the Preserve Public Education program. I need plaintiffs' 164.

Your Honor, I am handing the witness what has been admitted as plaintiffs' 164. * * * *

* * * *

Q. Mrs. Baker, this was plaintiffs' Exhibit No. 164, was one [719]of the activities scheduled and Timeline used in the Preserve Public Education program in 1981-82. Is that correct?
A. That is correct.

* * * *

Q. And plaintiffs' 164 outlines the plan of action for Preserve Public Education, and details responsibilities for each department for that program. Is that correct?
A. That is correct.

* * * *

[724]Q. Preparation for and participation in the 1981-82 election campaigns was an integral part of the Public Education program. Is that correct?
A. I would not say yes to that unequivocally. The Preserve Public Education program was a funding program to cause the state legislature to move toward a 50 percent maximum funding for all of Public Education, K-12, community colleges and higher education. To the extent that it involved legislators and their action on the state aid budget, on the community college budget,

and on the four-year institution budget, and then it was an appropriate program for funding.

If it related at all to political action, it is that, it was taken into consideration when legislators were running for their campaign, and that would have been over [725]the, you know, over the years. They stood for election in 1982.

Q. Well, if you look, if it wasn't an integral part of the PPE program, Mrs. Baker, could you tell me why plaintiffs' 164 which is your Timeline, on pages three and four of the Timeline?
A. Which document are you using?

Q. Plaintiffs' 164. This is the Timeline. You have that.
A. In this document?

Q. Pages three and four. I haven't asked my question yet. Include as the, among the activities of the Preserve Public Education program a series of election campaign activities culminating in the general election day, and evaluation of election 1982.
A. It is a priority project of the MEA to finance public education. Our Preserve Public Education program was a project to implement the getting the funding for public education. It did integrate with the political process.

* * * *

JUDGMENT
[6th Cir. Aug. 14, 1989]

United States Court of Appeals

FOR THE SIXTH CIRCUIT

FILED
AUG 14 1989
Leonard Green,
Clerk

No. 87-1700

JAMES P. LEHNERT, ELMER S. JUNKER, JAMES LINDSEY, SAM C. PETICOLAS, JOHN R. SCHAUBLE and THEODORE D. SPEERMEN,
Plaintiffs-Appellants,
v.
THE FERRIS FACULTY ASSOCIATION; MICHIGAN EDUCATION ASSOCIATION; NATIONAL EDUCATION ASSOCIATION OF THE UNITED STATES,
Defendants-Appellees.

Before: MERRITT, MARTIN and MILBURN, Circuit Judges.

JUDGMENT

ON APPEAL from the United States District Court for the Western District of Michigan.

THIS CAUSE came on to be heard on the record from the said district court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said district court in this case be and the same is hereby affirmed.

IT IS FURTHER ORDERED that Defendants-Appellees recover from Plaintiffs-Appellants the costs on appeal,

as itemized below, and that execution therefor issue out of said district court, if necessary.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

/s/
Clerk

Issued as Mandate: November 17, 1989

[Attestation & taxation of costs omitted in printing]